

ARTICLE SERIES

# **THE NIGERIA STARTUP ACT: WHAT IT IS AND WHY IT MATTERS**

An abstract graphic in the bottom half of the page, featuring a network of glowing blue hexagons and lines, resembling a molecular structure or a digital network. It is set against a dark blue background that transitions from the red header.

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# INTRODUCTION

The Nigerian technology and innovation space in general, and its startup ecosystem in particular, has been gaining momentum and recording impressive growth in recent times.

For instance, Nigerian startups retained USD1.37 billion of Africa's USD 4 billion funding in 2021[1] and reports show that Nigeria has the highest volume of startups in Africa. [2] Unfortunately, Nigerian startups have a high failure rate with a whopping 61% startup failure rate recorded from 2010-2018;[3] these failures have been attributed to various factors including aggressive government policies, regulatory bottlenecks, over-saturation of startups in select locations, talent dearth, high cost of doing business, funding challenges, etc.

Consequently, it is evident that steps must be taken to maintain/spur the development of the ecosystem and reduce the failure rate of tech-enabled businesses. Achieving these goals requires conscious and consistent government efforts to address the challenges earlier identified, promote existing participants in the ecosystem and encourage prospective participants to fully engage in the ecosystem.

Startup Acts have proven themselves to be a veritable tool towards achieving the goals set out above. For example, over €34,000,000 (thirty-four million Euros) in investments went into Italian startups between 2012-2015 following the introduction of a Startup Act.[4]

Similarly, following the introduction of a Startup Act in 2018, Tunisia recorded \$22,400,000 (twenty-two million four hundred thousand United States Dollars) from investors in 2019 alone. Startups in Tunisia have also been exploiting the Act. For example, while only 16 startups applied to be labelled as startups in March 2019, 40 applications were recorded in July 2022 alone.[5] It suffices to say that the Tunisian Startup Act has helped rapidly develop the startup ecosystem in Tunisia.[6]

It is to this end that Stakeholders canvassed for the introduction of a Nigerian Startup Act ("the Act"). The Bill for the passage of the Act has been passed by the National Assembly and the President gave his assent to the Bill today. As such, from today 19 October 2022, Nigeria has introduced its own Startup Act.

In this article, we will examine the provisions of the Act, why it matters, and the potential the Act offers the Startup Ecosystem and the Nation in general.

[1] McKinsey & Company, "Harnessing Nigeria's fintech potential" available at <https://www.mckinsey.com/-/media/McKinsey/Featured%20Insights/Middle%20East%20and%20Africa/Harnessing%20Nigeria's%20fintech%20potential/Harnessing-nigeria-fintech-potential-vF.pdf> accessed 09 August 2022

[2] Quartz Africa, "Nigeria has the most Startups in Africa but falls short on other critical metrics" available at <https://qz.com/africa/2012780/nigeria-ranks-first-in-african-startups-but-faces-challenges/> accessed 9th August 2022

[3] WeeTracker, "Tracing the 'SUCCESS & FAILURE' of African Startups" available at [https://weetracker.com/wp-content/uploads/GCAF\\_better\\_africa/GCAF\\_The%20Better%20Africa\\_%20March.pdf](https://weetracker.com/wp-content/uploads/GCAF_better_africa/GCAF_The%20Better%20Africa_%20March.pdf) accessed 9th August 2022

[4] 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

[5] Startup Tunisia, "Résultats des sessions de labellisation" available at [https://Startup.gov.tn/fr/Startup\\_act/results](https://Startup.gov.tn/fr/Startup_act/results) accessed 9 August 2022.

[6] Afrikanheroes "What Difference Have Startup Acts Made in African Countries Where they Exist?" available at <https://afrikanheroes.com/2020/12/13/what-difference-have-Startup-acts-made-in-african-countries-where-they-exist/> accessed 9 August 2022. See also Disrupt Africa, "African Tech Startups Funding Report 2021" available at <https://disrupt-africa.com/funding-report/> accessed 9 August 2022

## WHY THE ACT MATTERS

As earlier referenced, Nigeria recorded a 61% startup failure rate from 2010-2018 which may be attributed to various factors including aggressive government policies, regulatory bottlenecks, over-saturation of startups in select locations, talent dearth, high cost of doing business, funding challenges, etc. The Act does a decent job of addressing these issues.

We will explore the notable provisions which may serve as a catalyst for growth and possibly increase the rate of success for early stage startups in Nigeria.

### Application of the Act

The Act applies to all companies incorporated under the Companies and Allied Matters Act and granted the startup label and organizations and establishments, whose activities affect the creation, support, and incubation of labelled startups in Nigeria.[7] It seeks to:

- a) Provide a legal and institutional framework for the development of startups in Nigeria;
- b) Provide an enabling environment for the establishment, development, and operation of startups in Nigeria;
- c) Provide for the development and growth of technology-related talent; and
- d) Position Nigeria's startup ecosystem as the leading digital technology centre in Africa.[8]

The establishment of the National Council and its Secretariat

Nigeria presently has over 900 Ministries, Departments and Agencies (MDAs) which brings its own set of challenges. As a result, it may have been a bit of an overkill if this Act also set up another agency to administer the provisions of the Act.

The drafters of the Act seem to have taken this into consideration and so rather than creating a new agency, a National Council for Digital Innovation and Entrepreneurship (National Council) was set up with the National Information Technology Development Agency (NITDA) serving as the Secretariat to the Council.

The role of the National Council includes 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 startups and ensuring the monitoring and evaluation of the regulatory framework to encourage the development of startups in Nigeria[9].

An interesting inclusion in the Act is that 4 members of the startup ecosystem will sit on the National Council along with the following persons:

[7] Section 2 of the Act  
[8] Section 1 of the Act  
[9] Sections 4 – 7 of the Act

- a) the President of the Federal Republic of Nigeria;
- b) the Vice-President of the Federal Republic of Nigeria;
- c) the Minister for Communications and Digital Economy;
- d) the Minister responsible for Finance, Budget and National Planning;
- e) the Minister responsible for Industry, Trade and Investment;
- f) the Minister for Science, Technology and Innovation;
- g) the Governor of the Central Bank of Nigeria;
- h) the Director-General of NITDA;
- i) a representative of the Nigeria Computer Society; and
- j) a representative of the Computer Professionals (Registration Council of Nigeria)

The effect of the foregoing is that, by having members of the ecosystem forming part of the National Council, the ecosystem itself will be in a position to identify issues that directly affects startups and present policies and regulations that could strengthen and build the ecosystem. This is commendable and could ensure that the laws and policies that affect the ecosystem would be considered and properly implemented by the ecosystem players and not just left to the hands of government officials.

### **The role of NITDA and a Council Agent**

NITDA plays a crucial role under the Act which complements its already existing position as the government agency responsible for developing programs

and policies that drive the growth of technology and tech-enabled businesses in Nigeria.

NITDA serves as the Secretariat under the Act<sup>[10]</sup> and has the responsibility of implementing the provisions of the Act. It will also collaborate with other existing MDAs to ensure that startups are allowed to enjoy the incentives that are provided for under the Act.

The role played by NITDA here would be quite beneficial to the ecosystem and obviates the need to set up another agency as it already has the structures in place to serve as an implementing agency.

Another innovative introduction in the Act is the Council Agent which would serve as a monitoring and evaluation agent in ensuring that the provisions of the Act are implemented. It would also provide quarterly reports and feedback to the National Council on developments in the ecosystem.

### **Definition of Startups under the Act**

Startups are defined under the Act as a company in existence for not more than 10 years, with its objectives being the creation, innovation, production, development, or adoption of a unique digital technology innovative product, service, or process.<sup>[11]</sup>

[10] Section 9 of the Act

What this definition connotes is that the Act will apply to tech-enabled startups, which are companies that leverage existing innovative technological advances to solve operational issues or improve customer experience. It would therefore not apply to small and medium enterprises (SMEs) that are not tech-enabled.

### **Labelling of Startups**

In order to determine the startups with the right metrics to be considered tech-enabled, the Act provides for “labelling” which is a merit granted to qualified startups and grants them access to incentives provided under the Act.

For a startup to be eligible for labelling, it must meet the following criteria:

- a) be registered as a limited liability company under the Companies and Allied Matters Act and has been in existence for a period not more than 10 years from the date of incorporation;
- b) its objects are innovation, development, production, improvement, and commercialization of a digital technology innovative product or process;
- 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-third local shareholding held by one or more Nigerians as founder or Co-founder of the startup; and

e) in the case of a sole proprietorship or partnership, it satisfies the three preceding conditions.[12]

For sole proprietors and partnerships that meet the other criteria but are not limited liability companies, they are granted a “pre-label status” for a period of six months so they can enjoy the incentives under the Act and subsequently incorporate a company. Where they fail to incorporate a company at the end of the six months period, the pre-label status would be revoked.

However, it must be noted that the Act, and the labelling provisions thereunder, does not apply to an organization which is a holding company or subsidiary of an existing company that is not registered as a startup.[13]

It can be inferred that these provisions of the Act are geared towards ensuring that early stage startups that are usually constrained with regards to funding, can be the main beneficiary of the labelling process. However, startups can have foreign founders and investors that hold up to 2/3rd of the startups share capital and still be qualified for labelling.

### **Funding for Startups**

The Act contains various provisions geared toward promoting access to funding for startups. The Act created a Startup Investment Seed Fund[14] (Fund) which shall be managed by the Nigeria Sovereign Investment Authority (NSIA).

[11] Section 47 of the Act.  
[12] Section 13(2) of the Act  
[13] Section 13(3) of the Act

A sum not less than N10,000,000,000 (ten billion Naira) shall be paid into the Fund on an annual basis. The Fund shall be used to provide finance to early stage startups and also provide relief to technology laboratories, accelerators, incubators and hubs.

A Credit Guarantee Scheme was also set up under the Act and there are provisions guaranteeing access to grants and loan facilities administered by the Central Bank of Nigeria (CBN), the Bank of Industry, and other bodies statutorily empowered to assist SMEs and entrepreneurs.[15]

### **Tax incentives**

To reduce the cost of doing business, the Act introduced various tax incentives for startups. For example, startups may, in specific circumstances, be exempted from payment of income tax for five years[16] and all startups are entitled to the full deduction of any expense on research and development which are wholly incurred in Nigeria.[17] In addition, startups that meet the conditions for pioneer status may receive expeditious approval from the Nigerian Investment Promotion Commission (NIPC) for the grant of tax reliefs and incentives under the PSI Scheme.[18]

Understanding that funding from the private sector also has a crucial role to play, the Act introduced incentives to encourage both local and foreign investors to invest in startups in Nigeria. These incentives include tax credits of up to 30% of the investment[19] and free repatriation of funds for foreign investors.[20]

### **The Startup Consultative Forum**

To prevent aggressive regulatory policies, the Act introduced a Startup Consultative Forum (the “Forum”) which shall comprise of industry stakeholders and representatives.[21] The Forum creates a continuous avenue for stakeholders to liaise with the Nigerian Government for the promotion of the startup ecosystem. In addition, the Act requires the implementation of the National Digital Innovation, Entrepreneurship, and Startup Policy for the development of the startup ecosystem.[22] It is expected that the implementation of the Policy alongside continuous engagement with stakeholders will minimize the chances of the introduction of aggressive Government policies that hamper the growth of the ecosystem.

### **Regulatory interventions**

Concerning regulatory bottlenecks, the Act delves into facilitation and assistance for startups. Specifically, the Act introduced a startup Portal which generally facilitates the issuance of a permit or licence to a labelled startup and also serves as a hub for interaction between the ecosystem and the regulators.[23]

[14] Part V of the Act

[15] Section 27 of the Act

[16] Section 25(2) of the Act. A labelled Startup may be entitled to exemption from the payment of income tax or any other tax chargeable on its income or revenue for a period of three years and an additional two years if still within the period of a labelled startup, provided that the commencement date of the tax relief shall be the date of the issuance of the startup label.

[17] Section 25(3) of the Act

[18] Section 24 of the Act

[19] Section 29(2) of the Act

[20] Section 29(3) of the Act. This is a particularly important incentive for foreign investors in light of the scarcity of FX through official channels and the challenges associated with obtaining FX via the black market.



Going into specific licensing/registration, the Act makes provisions for facilitation/fast-tracking of startups' participation in the Securities and Exchange Commission (SEC) regulatory incubation program, the CBN regulatory Incubation program and any other regulatory sandbox program.[24]

Furthermore, the Secretariat would assist startups who intend to secure licences from the SEC and CBN by fast tracking the registration processes and also ensuring that such startups are granted discounts on official fees payable to the regulators.

Startups would also receive assistance in listing on the relevant board of the Nigerian Exchange Limited or on similar stock and commodity exchanges operating in Nigeria.[25]

### **Protection of Intellectual Property and Technology Transfer**

The Act recognises the role that intellectual property (IP) plays in the life of a startup and so it provides that the Secretariat shall assist startups in protecting and commercialising their IP rights. It shall also provide assistance to startups that intend to file international trademarks and patents; and also support startups that intend to institute legal action for infringement of their IP rights. provide technical assistance to labelled startups to enable them commercialise their research results.

[26] Part VI of the Act

[27] Section 38 of the Act. Accelerator programs are business program that supports early-stage, growth-driven companies through education, mentorship and financing while a Startup incubator is a collaborative program for Startup companies – usually physically located in one central workspace – designed to help Startups in their infancy succeed by providing workspace, equipment, utilities (including internet service) and discounted or free professional services, such as accounting and legal help.

[28] See generally Part IX of the Act

In addition to the foregoing, the Secretariat shall collaborate with the National Office for Technology Acquisition and Promotion (NOTAP) in ensuring that technology transfer registrations and other related activities are seamless and expedited and in accordance with the provisions of this Act.

### **Talent development and establishment of hubs**

The Act makes specific provisions to promote talent development, scale the businesses of startups, and ultimately establish Nigeria as a Startup Hub in Africa much in the same way as places like Silicon Valley, Albany and Seattle have established themselves as leading technology and innovation hub.

To establish this ambitious goal, the Act has specific provisions concerning training and capacity building programs for startups[26] and simultaneously granted startups access to training facilitated by the Industrial Training Fund and any organization that partners with the Secretariat for the training of entrepreneurs. This ensures the growth and development of local talents.

Going further, the Act directed the establishment of accelerator and incubator programs for startups,[27] the development of a national accelerator and incubator policy, and the creation of register accelerators and incubators[28] thereby ensuring that upcoming startups have the needed guidance/support system to help them scale.

Finally, the Act introduces the establishment and operation of startup innovation clusters, hubs, physical and virtual innovation parks in each state of the Federation.[29] The goal of this is to promote the growth and development of startups across all the States of the Federation as against over-saturating places like Lagos and Abuja with Sstartups while places like Kaduna and Abia record little progress.

Successful implementation of the above would ensure that the entire nation benefits from the growth/development recorded in the startup scosystem, promotes competition, and increases revenue for each State of the Federation.

## CONCLUSION

It is our considered view that with proper implementation, the objectives set out in the Satrtup Act may be met and even exceeded.

The enactment and proper implementation of the Act will likely spur the continuous growth of the ecosystem, reverse the trend of high startup failure and, perhaps more importantly, improve the fortune of the country and its people as a whole.

[29] Part X of the Act





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