

THE NIGERIAN STARTUP ACT 2022 IN PERSPECTIVE.

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INTRODUCTION

Nigeria's startup economic sub-sector stands in the top three most advanced in the African continent according to StartupBlink's Global Startup Ecosystem Index 2021. The startup space in Nigeria has witnessed a steady growth within the decade and as of Q4 of 2022, at least 480 tech startups were in operation across Nigeria, employing over 19,000 people.¹

In addition, Nigeria witnessed an economic boom in the Nigerian tech space 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

This growth became sporadic and spontaneous in the wake of the acquisition of Paystack - a Nigerian startup, by Stripe - an American company, for a whopping sum of \$200 million in October of 2020.³ There are several other Nigerian startups acquired by foreign companies in the past and several others being acquired presently. Owing to this recent unprecedented growth in the Nigerian tech industry, the Nigerian government had to act fast to provide a complementary and contemporaneous legal regime to cater for the development.

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

² Adeyemi Adepotun "Nigerian startups retain \$1.37bn of Africa's \$4b funding in 2021"
<https://guardian.ng/technology/nigerianstartups-retain-1-37bn-of-africas-4b-funding-in-2021/>

³ Techcrunch.com, 15th of October, 2020



With the above indices staring Nigeria in the face, the Federal Government had to respond and on the 19th of October, 2022, it enacted a timely piece of legislation – the Nigerian Startup Act, 2022. The pertinent question to ask (may be not now) is not whether it's a needed law or whether it came at the right time, but the question should rather be on the implementation and workability of the Act. Simply put, the Nigerian government and its MDAs fail at the level of implementation of laws and policies. It is hoped that this laudable Act will get a matching laudable implementation free of nepotism and bureaucratic bottle-necks that may stifle it.

The Act itself is an innovation and has introduced into the Nigerian corporate and legal space so many other innovations in the form of opportunities, jobs, offices, appointments, etc. The following are the high points of the Act or peculiar things one needs to know about the Act.

The Highlights of the Act

1. The Long Title: This title suggests the intendment and purpose of a piece of legislation. The long title of the Act reads, "An Act to Establish the National Council for Digital Innovation and Entrepreneurship, Provide for the Creation and Development of an Enabling Environment for Technology-Enabled Startups in Nigeria." This, therefore, means that the Act is solely targeted towards the encouragement of tech-inclined startups, not just any other kind of startup.

2. CAC Registration: It is pertinent to note that the Act does not contemplate to recognize any startup that has not first registered with the Corporate Affairs Commission and obtained its certificate of registration.⁴ It is then compulsory that for a startup to be accorded due recognition under this Act, it must first be incorporated with the CAC.

⁴ Section 2 of Nigerian Startup Act (NSA), 2022



3. The Council: The Act, for the first time, establishes the National Council for Digital Innovation and Entrepreneurship, which is a body corporate, capable of suing and being sued in its corporate name. it has perpetual succession and may acquire, hold and dispose of property. It shall consist of:⁵

- a. The President as Chairman⁶
- b. Vice President as Vice Chairman
- c. 4 Ministers – Ministers of Communication, Finance, Industry and Science & Technology
- d. The CBN Governor
- e. 4 Representatives of Startup Consultative Forum⁷
- f. A member of the Nigeria Computer Society
- g. A member of the Computer Professionals
- h. The DG of NITDA as Secretary

4. The Secretariat: The Act also provides for the Secretariat which shall be in NITDA (as the DG NITDA is the Secretary of the Council) and it shall have the power to create and coordinate the affairs of the Council and the implementation of its agenda, which include but not limited to drafting out programme for startups, organizing competitions and pitching platforms for startups.⁸

5. Startup Support and Engagement Portal (SSEP): The Secretariat with the approval of the Council, shall establish a SSEP (otherwise known as Startup Portal) to serve as a platform through which the registration of startups shall be conducted seamlessly with relevant MDAs such as CAC, NIPC, NOTAP, SEC, etc, connected.⁹

⁵ See Section 3,4,5,6,and 7 of NSA, 2022

⁶ Note that Section 6 (2) and (3) gives the President the power to remove a member if he is satisfied that such a member does not deserve to be there; and also, the power to appoint a person as member of the Council. Not also that under Section 8 the Council is empowered to have an agent that could assist it carryout its statutory mandate in relation to it's functions and duties with respect to startups.

⁷ See Section 12 of NSA, 2022 for a detail provision on the SCF and it is further discussed herein below.

⁸ See Section 9 NSA, 2022

⁹ See Section 10 NSA, 2022



6. The Co-ordinator: The Coordinator shall be an officer appointed under the Secretariat for the purpose of ensuring smooth registration of startups and for maintaining the records and a startup register for that same purpose.¹⁰

7. Startup Consultative Forum (SCF): Subject to the approval of the Council, the Secretariat shall set up the SCF for the purpose of interacting, collaborating with and sharing of ideas with the tech-society and the Nigerian startup ecosystem. The SCF shall comprise of stakeholders in the industry such as labelled startups, venture capitalists, angel investors, incubators, accelerators, innovations hubs, etc.¹¹

8. Startup Label or Certificate: This is a certificate to mark the status of a startup as being recognized and awarded the legal status of labelled startup under this Act. Where the eligibility conditions are met by the startup, the certificate is issued and the startup is deemed labelled. The requirements are as follows:¹²

- a. Registered with CAC as limited liability company or sole proprietorship/partnership
- b. Must be less than 10 years from date of registration
- c. Object must be digital technology innovation product or process
- d. Must own a registered software or be a holder of digital technology product or process
- e. One-Third local ownership/shareholding, excluding sole proprietorship/partnership as the latter is not registered with share capital. Note that a holding company or subsidiary not registered as a startup are not recognized.

9. Pre-Label Status: The pre-label status is a status enjoyed only by startups registered as sole proprietorship or partnership.

¹⁰ See Section 11 NSA, 2022

¹¹ See Section 12 NSA, 2022

¹² See Section 13 NSA, 2022



It is a status enjoyed for a limited period of 6 months, within which the startup is granted with pre-label status pending when the business is converted or re-registered as a limited liability company.¹³ By virtue of Sub (5) the pre-label is revoked at the expiration of the 6 months, and by then the sole proprietorship/partnership is expected to have acquired the full label or certificate or lose its pre-label status.

10. The Procedure: To acquire the labelled startup status, the applicant shall do the following:¹⁴

- a. Apply through the Startup Portal (should be online, but not stated yet)
- b. Submit all supporting documents as may be requested by the Secretariat
- c. The coordinator, if satisfied, shall enter the name in the register of startups
- d. Issuance of startup label/certificate to the applicant
- e. The label/certificate is only valid for a period of 10 years

11. Withdrawal of Label/Certificate: A labelled startup shall comply with all the extant laws regulating the business and commercial space in Nigeria, and other regulations and conditions for the grant of the label, otherwise its status shall be revoked and the certificate withdrawn. Before revocation and withdrawal of label, the coordinator shall issue it a 30-day notice for it to comply and regularize its defaults.¹⁵

12. The Startup Investment Seed Fund (SISF): The SISF is a fund portfolio created by the Act and to be managed by the Nigerian Sovereign Investment Authority for the purpose of financing the startup programme and implementation of its financial demands. The fund shall receive the total of not less than N10,000,000,000 annually for funding startups.¹⁶ This fund is available for startup businesses and programme which shall also be available for collaborative activities of the Secretariat with the National University Commission and other tertiary institutions in Nigeria.

¹³ See Section 13(4) NSA, 2022

¹⁴ See Section 14 NSA, 2022

¹⁵ See Sections 16 and 17 NSA, 2022

¹⁶ See Section 19 NSA, 2022



Training centres for capacity development and entrepreneurship shall be established and maintained in all the 6 geo-political zones.

13. Tax Exemptions and Fiscal Incentives: There are incentives put in place by the Act to encourage startups and tax exemption also in the form of business growth incentive. The incentives and exemptions are:¹⁷

- a. Pioneer status incentive
- b. Exemption from income tax and other taxes on incomes, for 3 years and another 2 years if still a labelled startup
- c. Deduction of expenses on research and development
- d. Exemption from the restrictions in CITA in respect of deductible expenses
- e. 5% withholding tax on incomes of non-resident companies providing technical, consulting, professional or managerial services for resident startups
- f. Exemption from contributing into ITF for training of staff and employee
- g. Exemption from export duties
- h. Access to FG grants and loans from the CBN, the BOI, etc
- i. Access to Credit Guarantee Scheme of the FG available through the Startup Secretariat
- j. Tax credit equal to 30% of the investments of investors, venture capitalists, investor angel, incubators, accelerators, etc who invest in startup
- k. Exemption from CGT provided that the gain on the disposed capital asset is held in Nigeria for not less than 24 hours.
- l. Separate portal on CAC, NOTAP, CBN, SEC, etc for flexible and seamless registration process and for registration with Copyright Commission and the Registry of Trademark, Patent and Design
- m. Allowed to raise funds from the public through licensed crowdfunding recognized by SEC.¹⁸

¹⁷ See Sections 24 and 25 NSA, 2022
¹⁸ See Section 32 NSA, 2022



n. Allowed to register with the NGX and be listed and quoted on the floor of the exchange.

o. Flexible and seamless capital repatriation by FDIs who invest in startups provided they have a valid CCI.¹⁹

14. Startup Accelerators, Startup Incubators and Investor Angels: These are key players in the process of getting a startup formed and running. They provide the needed technical, administrative and financial support in the process of setting up a startup and nurturing it to growth – a prompter of some sort. The Act has empowered the Secretariate to regulate the activities of these stakeholders. They are also entitled to some form of financial incentives of the FG in the form of grants and aids for their research and development operations.²⁰

15. Clusters, Hubs, Innovation Parks and Technical Development Zones: By virtue of Section 40, the FG is empowered to establish in all the states of the Federation a Technical Development Zone to enhance and encourage startups. These zones can also license private individuals to create and run clusters, innovation parks and hubs.

16. Angel Investor: Section 47 defines an angel investor to mean a high net worth individual (HNI) or company which provides funding to an early startup, typically in exchange for equity in the startup company.

Short Comings of the Act

To conclude this article without pointing out the inherent loopholes in the Act in question will be an academic blunder, because there is no piece of literature or legislation that is perfect. It is a timely piece of the law, it is laudable but also far from being perfect. Customarily, it will keep getting better with subsequent amendments to meet future needs.

Every lawyer in Nigeria, and even a non-lawyer to a large extent, knows that the country is not suffering a dearth of legal instruments or frameworks.

¹⁹ See Section 37 NSA, 2022

²⁰ See Sections 38 and 39 MSA, 2022



On the contrary, one can confidently say that Nigeria has laws in surplus to the extent that one can't think of any lawyer or judge who knows all (or even a half of) the legislations we have in this country.

The weaknesses inherent in the Act are:

1. The exclusion of the university community from the Council does not speak well of the Act. Considering that most startup ideas are conceived by undergraduates on campus, the inclusion of the university community including polytechnics and colleges of education would have been a drive closer to the home of startup. This loophole may be covered by the inclusion of any of the following persons on the Council: Minister of Education or Executive Secretary of NUC or Vice Chancellor of a Fed. University of Technology or a renowned Nigerian academia.
2. The inclusion of the President in the council is of no impact. The president is the one controlling all the Ministers and even the Vice President is answerable to him. There is no need to have the president be a member of the Council. The VP as head of the National Economic Council is appropriate to head it with the support of the five ministers, if the Minister of Education is included.
3. The power of the president in Section 6 to hire and fire a member of the Council is a dangerous loophole. A committee such as this ought to have its members enjoy some level of statutory covering from the arbitrary power of whoever is the president. Apart from Ministers who automatically lose their membership of the council when they cease being ministers, other members should enjoy some statutory protection on their appointment into the Council. Or at most let it be that the appointment/removal of a member by the president shall be subject to ratification by the House of Representatives.



4. The Act also failed to state the source wherefrom the N10,000,000,000 is to be received. The provision of Section 19 leaves the funding to any source to be approved by the Council. The council does not control Nigeria's revenue and should not be saddled with the power to determine where to fund its activities from. The Act should state specifically under which Ministry's budget the funding should come.

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