



Understanding the Provisions of the Nigerian Startup Act and its Impact on Businesses



Introduction

The Nigeria startup and technology development space has seen significant growth in recent years. According to the Nigerian Startup Ecosystem Report 2022 from Disrupt Africa, Nigeria has approximately 481 tech startups that employ 19,000 people¹. In another report, the Nigerian startup ecosystem has been ranked 61st globally and second in Africa². According to Disrupt Africa between 2017 and 2022, the startup industry attracted around \$2,068,709,465 in funding and investment sums into Nigeria.

The Nigeria Startup Act (the Startup Act, the Act), which was signed into law on October 19, 2022, signals the government's commitment to the development and growth of Nigeria's startup sector. The Act has been widely praised for its efforts to promote innovation and entrepreneurship in Nigeria. It is expected to have a positive impact on businesses captured under this law by providing them with the necessary support, funding, and resources to grow and develop. Some of the key provisions of the Act include tax incentives, access to funding, and support for research and development.

The Startup Act is deemed to be a positive step forward for the country's startup ecosystem, and it is expected to have a significant impact on businesses in the technology and innovation space. This article highlights and discusses the Startup Act and its expected impact on businesses.

What is a Startup?

To be labelled a startup under the Act the business must be as a limited liability company that has been in existence for not more than 10 years and has at least one-third of its shareholding owned by a Nigerian as a founder or co-founders with the objective of creating, innovating, producing, developing or adopting a unique digital technology innovative product, service or process. Additionally, it may be a holder or repository of a digital product or process or an author of a registered software. A sole proprietorship or partnership may qualify if they possess the technological requirements above but will be given a pre-label status which expires after 6 months to enable it to incorporate as a limited liability company.

¹ Nigerian Startup Ecosystem Report 2022. Disrupt Africa. (2022, September 14). Retrieved January 25, 2023, from <https://disrupt-africa.com/nigerian-startup-ecosystem-report-2022/>

² Jaiyeola, T. (2022, June 1). Startup index: Nigeria ranks 61st Globally, 2nd in Africa. Punch Newspapers. Retrieved January 25, 2023, from <https://punchng.com/startup-index-nigeria-ranks-61st-globally-2nd-in-africa/>



The definition of “Startup” in the Act applies to new businesses that utilise new technology or offer digital products and services. While this definition may appear narrow and seem to exclude some young businesses that develop disruptive products and services that are not necessarily technology-based, many popular disruptors like Netflix, Google and Amazon have all transitioned traditional methods with digital alternatives. The definition provided in the Startup Act is justifiable since the top startup’s in Nigeria prior to the Act are also all technology companies.³

The Startup Act specifically states that it does not apply to any organisation that is a holding company or subsidiary of an existing company if that existing company is not registered as a startup. This means that companies that are part of a larger organization that is not considered a startup, as defined by the Act, are not eligible for the benefits and incentives provided by the Act.

Establishment of the National Council for Digital Innovation and Entrepreneurship

The Nigeria Startup Act creates the National Council for Digital Innovation and Entrepreneurship (the Council). The President and Vice President of the Federal Republic of Nigeria are to chairman and vice-chairman of the Council. The Director of the National Information Technology Development Agency is the Secretary of the Council. Other members include Ministers of Finance Budget and National Planning, Industry Trade and Investment, and Science technology and Innovation, the Governor of the Central Bank of Nigeria, representatives of the startup consultative forum established under Section 12 of the Act and representatives of the Computer Society and Computer Professionals.

The Council's main responsibility is to create policies and guidelines to achieve the goals of the Act. It also approves programs, monitors the progress of the policies and programs, and offers support to individuals, universities and research institutions working on postgraduate research in science, technology, and innovation. The Council also has the power to appoint an Agent to carry out its instructions and provide quarterly and annual reports on the progress of the programs.

Secretariat of the National Council for Digital Innovation and Entrepreneurship

According to Section 9 of the Startup Act, the National Information Technology Development Agency (NITDA) is designated as the Secretariat of the Council, headed by the Director General of NITDA. The Secretariat has several functions geared towards the realization of the intention of the Act, including:

1. The Secretariat has the task of organising the process of labelling a startup, as well as taking away the label when needed. Additionally, it is their responsibility to work with stakeholders to encourage digital technology innovation, as well as keeping a record of startups, incubators and accelerators. The Secretariat is also expected to facilitate research and development relating to digital technology innovation carried out by a startup. They are also in charge of implementing the National Digital Innovation, Entrepreneurship and Startup Policy (NDIESP); devising instructions and incentives for digital technology innovation hubs, digital technology parks and community enterprise hubs in Nigeria; assessing proposals, policies and programmes for the Council and offering advice on matters concerning startups, digital technology innovation, entrepreneurship and matters related to the Act.

2. The Secretariat, with the Council's approval, is to set up a startup support and engagement portal. The portal will offer a one stop shop for registration and contact with government departments and regulators, as well as for acquiring the necessary licenses and permits. Additionally, the platform will inform startups of the incentives available to them, and foster regulatory support for the growth of startups in the country.

³Admin. (2022, January 14). 30+ Top Startups in Nigeria to watch out for in 2022. StartupHR Toolkit. Retrieved February 6, 2023, from <https://nigeria.startuphrtoolkit.com/top-startups-in-nigeria/>



3. The Secretariat with the approval of the Council is also empowered to establish a consultative forum for startups to share information and work together. This forum will help startups access the right information and resources to help them grow and develop. This forum will comprise of labelled startups, angel investors, venture capitalists, incubators, accelerators and innovation hubs and will provide information on:

- i. Eligibility criteria to be labelled under the Act
- ii. Incentives that are available to startups
- iii. Information on resources and capabilities in the locality
- iv. Choosing representatives to be part of the Council
- v. Discussing ideas and proposals to send to the Council for consideration and other important issues affecting the Nigerian startup ecosystem.

Startup financing

The Startup Act establishes a Startup Investment Seed Fund (the Fund) to provide financing for startups. According to Section 19 of the Act, the Council will establish the Fund, which will be managed by the Nigerian Sovereign Investment Authority (NSIA). The Act requires the Council to finance the Fund annually with at least N10 billion from sources approved by the Council. The Fund Manager will develop regulations for funding, managing and accessing the Fund, and creating an innovation grant budget and management framework to support research and development projects. The Startup Investment Seed Fund can provide startups with much-needed capital to help them grow and develop. This funding can be used to cover a range of expenses including hiring employees, purchasing equipment and materials and developing new products or services.

Additionally, Section 28 of the Act requires the Secretariat to set up a Credit Guarantee Scheme to provide access to financial and credit support for labelled startups. This will be particularly beneficial as many startups may not have the credit history or collateral required to secure traditional loans from banks and other financial institutions. The scheme will make funding more accessible to startups to ensure their needed growth and development.

The Act also mandates the Secretariat to ensure that labelled startups have access to government grants, loans and facilities administered by the Central Bank of Nigeria (CBN), the Bank of Industry (BOI) or other bodies authorized to assist small and medium-scale enterprises and entrepreneurs.

These funding options can help startups in Nigeria to secure the capital they need to launch and grow their businesses. It can act as an incentive to encourage more people to create their own startups which in turn can lead to more jobs, more innovation, and more economic growth.





Protection of Intellectual Property Rights

Startups are often created around a unique product or service many of which are rooted in some form of intellectual property. As a result of this, the protection of their intellectual property rights is critical for the success of startups in Nigeria. The Startup Act acknowledges the need to secure intellectual property rights for startups. In particular, the Act provides for a section of the startup portal to be designated for the easy registration of intellectual property for startups, both locally and internationally. Getting your intellectual property registered is quite straightforward nowadays as the majority of registries have implemented online registration. It is anticipated that the startup portal will simplify the process even further

The Secretariat is also required to put measures in place to prevent the infringement of the intellectual property rights of labelled Startups and ensure their commercialization and internationalization. This can include providing education and resources to startups on how to protect their intellectual property, as well as enforcing laws and regulations that protect intellectual property rights.

The secure protection of their intellectual property rights can help startups to maintain their competitive advantage and build a successful business. Protecting intellectual property rights can also help startups to generate revenue from their unique products, and services. For example, startups can license their intellectual property to others, or enter into joint ventures to commercialize their intellectual property. Additionally, intellectual property rights can help startups to attract investors. When investors see that a startup has taken steps to protect its intellectual property, they may be more inclined to invest in the company because there is a form of assurance that the startup's product will remain distinctive in the market as it is protected from infringement by others.

Protecting intellectual property will help startups to maintain their competitive advantage, generate revenue, attract investors, expand into new markets and promote innovation and creativity. Thereby creating an environment where Startups can flourish.

Technology Transfer

The Nigeria Startup Act acknowledges the value of transferring foreign technologies for the advancement and expansion of startups in the country. It addresses this is by mandating the National Office for Technology Acquisition and Promotion (NOTAP) to prioritize applications from labelled Startups. This means that startups can expect a faster and more efficient process when it comes to acquiring and utilizing foreign technologies.





NOTAP will also grant discount to startups on their registration fees for the transfer of foreign technologies. This will be of great value to startups as the costs associated with acquiring and utilizing foreign technologies are significant barriers for many startups to said technologies.

Additionally, NOTAP will provide technical assistance to startups to commercialise their research results. This can include providing support for intellectual property protection, market research, and commercialization strategy development. This can help startups to take advantage of the technologies they acquire and turn them into successful products and services. The Act's provisions for transfer of foreign technologies can help startups in Nigeria to access the latest and advanced technologies, which can be a critical part of the success of their business. Startups can use these technologies to improve their products and services, increase their competitiveness, and drive innovation and growth

Listing on the Nigeria Stock Exchange (NGX)

The Nigeria Startup Act includes provisions to support startups in getting listed on the Nigerian Exchange Limited (NGX) or other stock and commodity exchanges operating in Nigeria. Section 36 of the Act requires the Council to provide all necessary assistance to labelled Startups to enable them to meet the eligibility requirements for listing on these exchanges.

This assistance includes helping startups to meet the financial and reporting requirements, providing guidance on the listing process, and connecting startups with potential investors. This can prove to be an important element for the success of startups in Nigeria as getting listed on a stock exchange can provide access to new sources of capital and increase the company's visibility and credibility. Listing on a stock exchange also makes it easier for startups to raise money from the public.

Capital and Profit Repatriation

Section 37 of the Nigeria Startup Act addresses the issue of repatriation of capital and profits for foreign investors in labelled Startups. It requires the Secretariat to collaborate with the Central Bank of Nigeria (CBN) to guarantee the repatriation of investments by foreign investors through authorized dealers. This collaboration ensures that foreign investors in Nigerian startups can easily and safely repatriate their capital and profits.

As Nigeria operates both an official exchange rate which set by the CBN and a parallel-market or black-market exchange rate, which is more turbulent than the official exchange rate. In light of this, the Act provides that the rate of conversion for repatriation shall be at the official rate, thus providing a much-needed level of certainty and stability for foreign investors in Nigerian startups.

To facilitate the repatriation process, the Act also requires that the foreign investor present a Certificate of Capital Importation, which evidences that the initial investment fund was brought through the proper channel preventing any potential issues with illegal or unauthorized capital flow, anti-money laundering and anti-terrorism concerns.

Technology Development Zones

Section 42 of the Nigeria Startup Act provides for the establishment of Technology Development Zones (TDZ) to spur the growth and development of startups, accelerators, and incubators. The Act provides that startups, accelerators, or incubators situated in TDZs will be entitled to existing incentives provided under the Nigeria Export Processing Zones Act, such as tax exemptions for life, non-applicability of the Foreign Exchange regime administered by the CBN, and exemptions from import duties.

These incentives can help to reduce the costs of doing business for startups, accelerators, and incubators, making it easier for them to operate, innovate, and grow. This will attract more investment, build a strong startup ecosystem, and drive economic growth



The Act requires the Secretariat to collaborate with the Nigeria Export Processing Zones Authority (NEPZA) to establish the TDZs.

Infrastructures for Export

The Startup Act provides for access to export facilities for labelled Startups involved in the exportation of products and services deemed eligible under the Export (Incentives and Miscellaneous Provisions) Act. Such startups will be entitled to export incentives and financial assistance from the Export Development Fund, Export Expansion Grant, and the Export Adjustment Scheme Fund.



This can be a significant benefit for startups that are exporting their products or services, as it will reduce the costs of doing business and make it easier for them to enter new markets, expand their business and reach new customers. It will also help to promote innovation and entrepreneurship in Nigeria, as startups can develop new products and services that meet the needs of international markets.

Provision for Accelerator and Incubation Programs

Section 38 of the Nigerian Startup Act provides for the establishment of national accelerator and incubator programs that will grow the startup ecosystem. The Act requires the Secretariat to develop standards and guidelines to regulate the interactions and collaborations between startups, accelerators, and incubators. The Secretariat will also maintain a register of active accelerators and incubators, who will be entitled to grants under the National Digital Innovation, Entrepreneurship and Startup Policy (NDIESP). The platform will ensure that accelerators and incubators meet certain standards and provide valuable support to startups.

Accelerator and incubation programs are important to the startup ecosystem. They provide startups with the resources and support, they need to grow and succeed. Incubators help startups to resolve operational challenges, such as access to funding, talent, and mentorship, while accelerators can help startups to scale and grow quickly.

Training, Capacity Building and Talent Development

Sections 21 and 22 of the Nigerian Startup Act provide for training, capacity building and talent development for labelled startups. The Act provides for the establishment of digital technology acquisition centers across the six geopolitical zones in Nigeria to assist with talent development through collaboration with relevant agencies, the private sector, and supporting the activities of related academic research institutions.

The Act also mandates the Secretariat to partner with the Industrial Training Fund (ITF) to facilitate training programs for startup entrepreneurs and their employees and ensure that they have access to the training and development opportunities they need to grow and succeed.



Providing training, capacity building, and talent development opportunities can be an important part of supporting the growth and development of the startup ecosystem in Nigeria. It ensures that startups have access to the skills and knowledge they need to innovate and succeed in the market. This creates a more skilled and productive workforce, which is important for driving economic growth and development in Nigeria.

Tax benefits under the Act

The tax advantages provided by the Act are designed to help startups to grow and succeed by reducing their tax burden, encouraging investment and innovation. Some of the key tax incentives provided under the Act include:

I. Pioneer Status Incentive

Labelled startups operating in eligible industries may apply for tax reliefs and incentives under the Pioneer Status Incentive (PSI) through the Secretariat and the Nigerian Investment Promotion Commission (NIPC).

If granted, the PSI allows labelled startups to receive a tax holiday for an initial period of three years, which can be extended for an additional two years. The effective date for the PSI reliefs and incentives will be the date of issuance of the startup label. This means that the startup can start enjoying the benefits of the PSI from the date their label is issued.

The PSI program can be a significant benefit for labelled startups in Nigeria, as it can help to reduce the tax burden on these companies, making it more affordable for them to invest and grow their businesses. This can ultimately help to promote innovation and entrepreneurship in Nigeria, and drive economic growth and development in the country.

ii. Exclusion from Contribution to ITF

Labelled startups are not required to make contributions to the Industrial Training Fund (ITF) in relation to in-house training provided to their employees. Leading to a reduction on the financial burden on labelled startups, allowing them to invest more in the growth and development of their businesses. This incentive can play a crucial role in helping startups to invest in their own human capital by providing in-house training to their employees. Building a more skilled and productive workforce will ultimately drive innovation and growth in the startup ecosystem.

iii. Investment Tax Credit

Investors are entitled to an investment tax allowance equivalent to 30% of their investment in a labelled startup. This means that investors can claim back 30% of the amount they invested in the startup as a credit against their tax liability. The incentive is applied on any gains on investment, which are subject to tax. The reduction of tax burden on investors will make investment in labelled startups an attractive option.

It's worth noting that the Act specifically amends only the Companies Income Tax Act in this regard, which means that angel investors who invest without using a company may not be able to claim tax credit. This could limit the number of angel investors who are able to take advantage of this incentive, and may affect the growth of the startup ecosystem in Nigeria.



iv. Capital Gains Tax

The Act also exempts angel investors, venture capitalists, private equity fund, accelerators or incubators from capital gains tax when they dispose their investment in a labelled Startup provided that the assets have been held for a minimum of 24 months.

Summary

The Nigeria Startup Act provides a range of support measures for startups, including funding, credit support, intellectual property protection, training, and tax incentives. These measures are intended to help startups to grow, develop, and to create a more favourable environment for innovation and entrepreneurship in Nigeria. It is difficult to predict the exact outcome of the Act, as it depends on various factors such as the implementation and execution of the law, the level of support and participation from the private sector, and the overall economic and political climate in the country. However, the Startup Act provides a framework for the government to support and encourage the growth of startups in Nigeria, and it can potentially lead to an increase in funding, resources and incentives for startups, which can promote innovation, job creation, and overall economic growth. It is also clear that it is targeted to help the startups in Nigeria to be recognized as innovative and unique digital technology product providers and services which will also attract more investment to the country.

Authors

Chidinma Oko-Egwu

Associate

*Commercial Litigation &
Dispute Resolution
Regulatory and Compliance*

T: +234 1 700 257 0 Ext 151

E: coko-egwu@alp.company



Olajumoke Coker

Associate

*Commercial Litigation &
Business Advisory*

T: 234 1 700 257 2 Ext 113

E: ocoker@alp.company

