The Scope and Applicability of the Nigeria Start-up Act, 2022 and its Effects on the Legal Profession

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Abstract

This article critically examined the provisions of the Nigerian Start-up Act 2022, discussed why the Act is important and highlighted the potentials the Act offers the startup ecosystem, and the nation in general. The Act aims to provide a legal and institutional framework for the development of startups in Nigeria by providing an enabling environment for the establishment, development, and operation of startups in Nigeria, providing for the development and growth of technology-related talent, and positioning Nigeria's startup ecosystem as the leading digital technology centre in Africa, having excellent innovators with cutting edge skills and exportable capacity. 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 USD4 billion funding in 2021 and reports show that Nigeria has the highest volume of startups in Africa. Unfortunately, Nigerian startups have a high failure rate with a whopping 61 percent startup failure rate recorded from 20110-2018; these failures have been attributed to various factors including aggressive government policies, regulatory bottlenecks, over-saturation of startups in selected 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. Startup Acts have proven

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themselves to be a veritable tool towards achieving the goals set out above. The Act is a product of an impressive startup ecosystem, stakeholder engagement and regulatory foresight.

Keywords: Nigerian Start-Up Act, Legal Industry.

Introduction

On 19th October 2022, the President of the Federal Republic of Nigeria gave his assent to the Nigeria Startup Bill 2021 (the Bill), effectively signing it into law as the Nigeria Startup Act 2022 (the Act). In the main, the Act serves to establish a legal and institutional framework for the advancement of labelled startups in Nigeria,[3] and to create an environment that encourages the formation, growth and operation of startups in Nigeria. More so, the Act seeks to foster the growth of tech-related skills and place the Nigerian startup ecosystem as the foremost digital technology hub in the continent.[4]

The Act aims to provide a legal and institutional framework for the development of startups in Nigeria by providing an enabling environment for the establishment, development, and operation of startups in Nigeria, providing for the development and growth of technology-related talent, and positioning Nigeria's startup ecosystem as the leading digital technology centre in Africa, having excellent innovators with cutting edge skills and exportable capacity.[5] A startup is defined 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.[6]

The overarching objective of this law is to bridge the gap between startups and regulators in order to harness the potential of the country's digital economy by bringing both sides together at one table to co-create regulations. This is a welcome development following the perceived

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3 NS Act 2022, s1(a).
4 Ibid, s1(b)(c).
5 Ibid.
6 D. Salawu and Others, 'Nigeria: the Nigeria Startup Act 2022: Highlights Of Its Framework And Notes On Its Prospects' <https://www.mondaq.com> accessed 13 November, 2022.

disconnect between a thriving technology ecosystem in Nigeria and the Federal Government.[7] The Act aims to foster a more coordinated relationship to ensure that the laws and regulations being developed are clear and support investments in technology startups.[8]

The said Act came into existence as a result of the fact that Nigeria has the right population, the market, the resources and the enabling environment to ensure the Act is implemented and applied appropriately for the growth and development of the Nigeria economy. The Act is modelled from the Startup Acts of other Africa Nations especially the Tunisia Startup Act, 2018. Taking the Tunisian Startup Act as a case study, the legislation seeks to promote entrepreneurship motivation for startup companies, and to lower barriers for the establishment of businesses, by limiting the risk of entrepreneurs, and creating an enabling environment for empowering entrepreneurs to launch their ventures and bring innovative ideas to the market.[9] One thing the Nigerian Startup Act seeks to do by its provisions can be subsumed or streamlined into five:

- Collaboration
- Engagements
- Incentives
- Linkages
- Supports

In collaboration, this will bring about sound policymakers, private sector and other organisations that operate within the Nigerian Startup ecosystem in one platform to enable them to engage together, and link up to bring about the implementation of the Act in so doing benefit from the incentive as provided by the Act. The Act is to create support and it is not meant for regulations as some of the agencies that will be collaborating are already regulators on their own. In this paper, we shall highlight some of the notable and key provisions of the Act and their potential impacts on the stakeholders.

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7 K. Kalu, 'Nigeria: the Nigeria Startup Act, 2022: A road Map To Technological Inclusion In The Nigerian Economy' <https://www.modaq.com> accessed 15 November, 2022

8 NS Act 2022, s1(a)(b)(c).

9 TS Act 2018, s1.

The Purport of the Start-Up Act

The Startup Act is a body of legislation enacted by a state to create a legal framework for business startups within its territory, most especially to regulate the activities of startup companies in diverse sectors of the economy and to also encourage innovations and economic participation of entrepreneurs in the country.

Taking the Tunisian Startup Act as a case study, the legislation seeks to promote entrepreneurship motivation for startup companies, and to lower barriers for the establishment of businesses, by limiting the risk of entrepreneurs, and creating an enabling environment for empowering entrepreneurs to launch their ventures and bring innovative ideas to the market.[10]

The Nigerian Startup Act recently passed on 19th October, 2022, in similar vein seeks to create a legal framework that provides an enabling environment for the establishment, development and operation of startups in Nigeria; provide for the development and growth of technology-related talent; and position Nigeria's startup ecosystem, as one of the leading digital technology center in Africa.[11]

Looking at the importance of Startups and Startup Acts, Startups in most countries around the world, contributes a handful measure in quota to the overall economic development of such countries. In fact, Start Ups companies around the world tend to grow in number day by day as new cutting edge innovations are discovered and new solutions vis-a-vis approach are being explored by persons or group of persons to procure solution to real time industrial and social problems. In Nigeria for instance, according to McKinsey & Company, Nigerian startups retained USD1.37 billion of Africa's USD 4 billion funding in 2021,[12] and also Quartz Africa ranked Nigeria to possess the highest volume of startups in Africa.[13]

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[10] R. A. Oludude, 'A Comparative Analysis of the Legal Framework of Startups: the Tunisian Startup Act, 2018 and the Nigerian Startup Act, 2022 <https://www.thenigerianlawyer.com> accessed 14 November, 2022.

[11] (n1).

[12] Mckinsey and Company, 'Harnessing Nigeria's Fintech Potential' <https://www.mckinsey.com> in R. A. Oludude, 'A Comparative Analysis of the Legal Framework of Startups: the Tunisian Startup Act, 2018 and the Nigerian Startup Act, 2022 <https://www.thenigerianlawyer.com> accessed 14 November, 2022.

[13] Quartz Africa, 'Nigeria Has The Most Startups In Africa But Falls Short On Other

To relatively develop the growing number of startup, promote economic development, and accentuate business innovations, startup bills/Act are therefore one of the conscious ways for countries to annex the importance of this budding aspect of the economy. Over the years for instance, countries have spent a lot in the enactment and implementation of Start-up Acts in their countries e.g. Italy invested €34,000,000 (thirty-four million Euros) into Italian startups between 2012-2015 following the introduction of a Startup Act, and similarly following the introduction of a Startup Act in 2018 (one of the case studies), the Tunisian Government recorded $22,400,000 (twenty-two million four hundred thousand United States Dollars) from investors in 2019 alone. In turn, both countries have in turn equally recorded a rapid development in their startup ecosystem respectively.[14]

Returning back to the Nigerian Startup Act, it has provided a plausible legal framework for the development of the Startup Ecosystem in the country. Also, a brief overview into the formation of Act exposes an output of wide individual participations across all level. The Nigerian Startup did not emanate from the legislative house but rather a legislation that emanated from the properly curated sponsorship of leaders in the ecosystem, in conjunction with the government. The Act which in its bill passage processes indulged the participation of Presidential working group comprising of Ministries, Departments and Agencies ("MDAs"), Decision makers and the ecosystem stakeholders at state levels in all geopolitical zones through Presidential Announcements and Town Hall Meetings.[15]

Establishment of the National Council for Digital Innovation and Entrepreneurship

Under section 3 of the Act which establishes the National Council for Digital Innovation and Entrepreneurship (the Council). The membership of the Council is comprised of: the President and Vice-President of the Federal Republic of Nigeria; the Ministers for Communications and Digital

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Critical Metrics' <https;//www.qz.com> in R. A. Oludude, 'A Comparative Analysis of the Legal Framework of Startups: the Tunisian Startup Act, 2018 and the Nigerian Startup Act, 2022 <https://www.thenigerianlawyer.com> accessed 14 November, 2022.

[14] (n8).

[15] Borg, 'On the Journey to the Nigerian Startup Act' <https://www.borg.re> accessed 14 November, 2022.

Economy, Finance, Budget and National Planning, Industry, Trade and Investment, and also the Minister for Science, Technology and Innovation; the Governor of the Central Bank of Nigeria (CBN); three (3) representatives of the Startup Consultative Forum (to be established under Section 12 of the Act); two (2) representatives from the Nigeria Computer Society; and the Director-General of the National Information Technology Development Agency.[16]

The functions and powers of the Council are provided for in Section 7 (1) and are: formulating and providing general policy guidelines for the realization of the objectives of the Act; giving overall direction for the harmonization of laws and regulations that affect a startup; approving the programmes of the Secretariat (to be established under Section 9 of the Act); monitoring and evaluating the regulatory framework to encourage the development of startups in Nigeria; monitoring and ensuring the implementation of the policies and programmes of the Secretariat; supporting digital technological development through grants to persons, research institutions, and universities pursuing postgraduate programs in the areas of science, technology and innovation; appointing a council agent to carry out such functions as the Council may require; and carrying out such other functions as are necessary or expedient to ensure the efficient performance of the functions of the Secretariat and other bodies to be established under the Act.[17]

For the Council to include members of the Executive arm of Government, various Federal Ministries, and the CBN Governor, amongst others, I believe was intentional and well-considered. In making the President and Vice President of the Federal Republic of Nigeria the Chairman and Vice Chairman respectively, the Council can draw on the support of the Executive Government to push policy. By including the Ministers of Finance, Budget and National Planning, Industry, Trade, and Investment, and the CBN Governor, the Council can foster cohesion in terms of economic policy and its potential impact on the Financial Technological market in Nigeria and the wider economy.

The inclusion of representatives of private sector, particularly representatives of the Startup Consultative Forum, ensures that the startup ecosystem

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[16] NS Act 2022, s3.
[17] NS Act 2022, s7

is ably represented and promotes rich dialogue in Council meetings.[18] This integration is a masterstroke by the draftsmen and encourages greater collaboration between State and private sector actors as no policy proposal would be considered as legitimate within the Nigerian startup ecosystem if it is done without the input of the of key stakeholders such as the private sector.

Establishment of the Startup Investment Seed Fund and Credit Guarantee Scheme

- 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.[19]

- 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.

- Other than meeting the criteria stated in Section 13 of the Act, the Act does not mention additional criteria that Labelled Startups must meet to qualify for financing under this Fund.[20] The Act does not also provide whether the government will have equity interest in the startups that the Fund has financed.

- 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

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[18] K. Kalu, 'Nigeria: the Nigeria Startup Act, 2022: A road Map To Technological Inclusion In The Nigerian Economy' <https://www.modaq.com> accessed 15 November, 2022.
[19] NS Act 2022, s19.
[20] NS Act 2022, s13.

information and financial management capacity building programmes to startups.[21]

Tax and Fiscal Incentives Under the Act

Some of the tax and fiscal incentives provided under the Startup Act are:

(a) A Labelled Startup which qualifies under the Pioneer Status Incentives Scheme may upon application to the Secretariat receive expeditious approval from the Nigerian 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.[22] 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) Act for a period of 3 (three) years and an additional 2 (two) years. The commencement date of the tax relief must be the date of the issuance of the startup label for this incentive to apply.

(b) 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.[23]

(c) 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.[24]

(d A Labelled Startup shall be exempted from contributing 1% of its annual payroll cost to the Industrial Training Fund as required under

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[21] Ibid, s28(2).
[22] Ibid, s24
[23] NS Act 2022, s25(3).
[24] Ibid, s25(4).

the Industrial Training Fund Act (as amended)[25] where it provides in-house training to its employees for the period where it is designated as a Labelled Startup.

(e) Labelled Startups engaged in the exportation of products and services and eligible under the Export (Incentives and Miscellaneous Provisions) Act are entitled to receive export incentives and financial assistance from the Export Development Fund, Export Expansion Grant,[26] and the Export Adjustment Scheme Fund.

(f) 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;[27] and

(g) 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.[28]

Applicability of the Act and Startup Labelling

By section 2 of the Act, the Act is applicable to companies incorporated under the Companies and Allied Matters Act that are granted the startup label.[29] This is perhaps the hallmark of the Act given that only startups that have received a startup label will qualify for the incentives provided in the Act.[30] Notably, the applicability of the Act seems to extend to startups set up as sole proprietorships and partnerships,[31] however, only a 'pre label' status will be granted for a period of six months until the sole proprietor or partnership[32] is registered as a company and can meet the conditions set in paragraph 6.[33] The Act also applies to organizations whose activities affect the creation, support and incubation of labelled

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[25] Ibid, s25(5).
[26] Ibid, s26.
[27] Ibid, s27.
[28] Ibid, s28.
[29] NS Act, 2022, s7.
[30] Ibid, s2(a).
[31] Ibid, s13. A startup label under the Act is a certificate issued by the Secretariat to a startup upon the fulfilment of the labeling requirements.
[32] NS Act 2022, s.13(2).
[33] Ibid, s13(4).

startups such as venture capitalists, accelerators, incubators and equity funds.[34]

A startup is eligible for labelling if: (i) it is registered as a limited liability company in Nigeria and has been in existence for a period not more than ten years from the date of incorporation; (ii) its objects are innovation, development, production, improvement and commercialization of digital technology innovative products or processes; (iii) it is a holder or repository of a product or process of digital technology or the owner or author of a registered software; and (iv) the founder or cofounder of the startup is Nigerian and holds at least one-third of its shareholding.[35]

To be granted a startup label, the startup is required to apply on the Startup Support and Engagement Portal (the Portal).[36] The Portal Coordinator shall, with the approval of the Secretariat,[37] enter the name and particulars of the applicant in the register of startups and issue a startup label to the applicant. This label (certificate) is valid for ten years and will be prima facie evidence that the startup has complied with all the requirements for labelling and has been labelled according to the Act.[38] If a labelled startup defaults in its obligations under the Act and fails to regularize the default within thirty days of notification from the Portal Coordinator, the Secretariat is empowered to withdraw the startup label.[39] A startup whose label is withdrawn may however apply to the Secretariat for a re-issuance of the startup label after rectifying the default.[40]

Startup Support and Engagement Portal

The Startup Support and Engagement Portal (the "Portal") which is aimed to serve as a platform for startups to register with the relevant MDAs is established under section 10(1) of the Act. In line with the objectives of the Council and nature of startups which are supported technologically, the Startup Portal is a digital platform which allows startups easily interact

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[34] Ibid, s2(b).
[35] Ibid, s13(2).
[36] Ibid, s14.
[37] Ibid, s47.
[38] Ibid, s15.
[39] NS Act 2022, s17.
[40] Ibid, s18.

with the MDAs and private institutions, and also facilitate the issuance of permits or license to labelled startups, amongst other listed functions.[41] The use of online portals and registration processes have had some success in recent years, particular reference is made to the Corporate Affairs Commission's (CAC) online portals for pre and post-incorporation matters.

Furthermore, in section 11 of the Act makes provision for the appointment of a Coordinator of the Portal responsible for maintaining a register of labelled startups in Nigeria and keeping relevant documents/records.[42] The Coordinator must not be below the rank of Assistant Director. However, it is noted that this provision is silent as to a requirement for technological expertise of the Coordinator. Considering the nature and objectives of the Startup Act, it is my view that the Coordinator is equipped with the knowledge of technology or the background for effective and efficient use of the portal.

The Portal, while commendable, has been received with mixed reviews. As a foundational element integral to the application of the Act, the Portal must be properly implemented in order to simplify and expedite the processes and functions of contained in section 10 (2) of the Act as it is the Platform and Forum through which labelled startups interface with private and public stakeholders.[43] My view is that the Coordinator be selected through an open bidding process whereby a company/entity with experience and a proven track record of effective delivery is appointed.

Startup Consultative Forum

In bridging the gap between regulators and startups the Act establishes the Startup Consultative Forum (the "Forum") on the Startup Portal to provide a platform for information sharing and collaboration in the Nigerian startup ecosystem.[44] The Forum will comprise of industry stakeholders and representatives registered on the Startup Portal and include the following:

(a) labelled startups;

(b) venture capitalists;

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[41] Ibid, s10(1).
[42] Ibid, s11.
[43] Ibid, s10(2).
[44] NS Act 2022, s12.

(c) incubation, accelerators, and innovation hubs; and

(d) two (2) civil society organizations involved in the advancement of technology and innovation.

Startup Label

A startup label under the Act is a certificate issued by the Secretariat to a Startup upon the fulfilment of the labelling requirements enlisted under section 13 of the Act.[45] The aim of the startup label is to enable the Council and stakeholders monitor closely the level of progress and development of the startups with the benefits they derive from the issuance of the startup label which will be achieved based on the fulfilment of their obligations as provided under section 16 of the Act.[46] The procedure for the application of the startup label is provided under section 14 of the Startup Act.[47]

It is worthy to note that the startup label is not supposed to last forever, rather it can last for a duration of ten years from the date of issuance as highlighted in section 15(3) of the said Act.[48] To be eligible for labelling a startup must 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.[49] Also, its objects must be innovation, development, production, improvement, and commercialization of a digital technology innovative product or process[50] and it is a holder or repository of a product or process of digital technology, or the owner or author of a registered software;[51] it has at least one-third local shareholding held by one or more Nigerians as founder or co- founder of the startup.[52] The Act shall not apply to an organization which is a holding company or subsidiary of an existing company which is not registered as a startup.[53]

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[45] Ibid, s13.
[46] Ibid, s16.
[47] Ibid, s14.
[48] Ibid, s15(3).
[49] NS Act 2022, s13(2)(a)
[50] Ibid, s13(2)(b).
[51] Ibid, s13(2)(c).
[52] Ibid, s13(2)(d).
[53] Ibid, s13(3).

Benefits of a Labelled Startup

- Facilitates registrations and approvals from the requisite MDAs more like the one-stop-shop created by the CAC.[54]
- Incentives, such as income tax exemption, company income tax exemption, five percent withholding tax exemption for non- resident companies, and exemption from contributing to the industrial training fund.[55]
- Access to Central Bank of Nigeria's (CBN) regulatory Sandbox, Securities and Exchange Commission's (SEC) regulatory incubation programmes, and any other regulatory sandbox program.[56]
- Listing of startups in Nigerian Exchange Limited with the help of the National Council for Digital Innovation and Entrepreneurship.
- Protection of intellectual property rights.[57]

Pre-Label Startup

Pre-label startup is applicable to sole proprietorship or partnership. They can be granted pre-label status for six months to enable them to comply with the initial requirements of a labelled startup. If this is not done within the period of six months, their label will be withdrawn.[58] The catch here is that the sole proprietorship or partnership could have existed for more than ten years and this will not affect their eligibility status as this only applies to limited liability companies as seen in the Act.

Training, Capacity Building and Talent Development

By virtue of section 21 of the Act, the Secretariat is saddled with the responsibility of designing and implementing a training and capacity building program for startups;[59] collaborating with the National Universities Commission and relevant institutions within Nigeria to develop modules, programs and hold workshops aimed at impacting

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[54] Ibid, s30.
[55] Ibid, s29(2)(3).
[56] Ibid, s32.
[57] Ibid, s31.
[58] Ibid, s17.
[59] NS Act 2022, s21.

knowledge necessary for the establishment and running of a startup in Nigeria.[60] Even more, the Council plan to work with universities, colleges and polytechnics to train students with the requisite skills and knowledge to start and run a startup. The Secretariat is also under obligation to establish centres for the acquisition of digital technology across the six geopolitical zones of Nigeria for the promotion of digital technology utilization.

Regulatory Collaboration

In support of its objective to bridge the gap between regulators and startups, the Act enjoins several regulators to buy into and support the ecosystem by integrating into the Portal and thereby creating a unique relationship between them. Sections 33-40 of the Act require the CAC, CBN, Nigerian Copyright Commission (NCC), Trademarks, Patent and Design Registries (the Registry), Securities and Exchange Commission (SEC), Nigerian Exchange Limited (NGX), and the National Office for Technology Acquisition and Promotion (NOTAP) to set up separate sections on the Startup Portal thereby creating a digital one-stop-shop for all activities under the mandate of the various regulators.[61]

The Act is careful not to create any new regulators, rather it works to foster collaboration and integration with the extant regulators, bringing everyone together. The Act seeks to ease administrative and compliance processes for labeled startups, by designating separate sections for relevant regulators in the Portal.[62] Basically, labelled startups can now rely on the Portal as a one-stop-shop that eases access to other regulators. Accordingly, there will be a designated section on the Portal for the CAC,[63] the Nigerian Copyright Commission,[64] the Trademark, Patent and Designs Registries,[65] the National Office for Technology Acquisition and Promotion,[66] the

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[60] *Ibid,* s22.

[61] K. Kalu, 'Nigeria: The Nigeria Startup Act, 2022: A road Map To Technological Inclusion In The Nigerian Economy' <https://www.modaq.com> accessed 15 November, 2022.

[62] D. Salawu and Others, 'Nigeria: the Nigeria Startup Act 2022: Highlights of Its Framework and Notes on Its Prospects' <https://www.mondaq.com> accessed 13 November, 2022

[63] NS Act 2022, s30(1).

[64] *Ibid*, s31(3).

[65] *Ibid.*

[66] *Ibid,* s33(1)(a).

Securities and Exchange Commission,[67] and the CBN.[68] Fintech startups that are specifically labelled will benefit from a designated section the Portal that eases licensing procedures and regulatory interface.[69]

A major challenge with Fintech Startup is the issue with securing licenses from relevant agencies like the CBN and SEC. Howbeit, young aspiring Fintech operators will have opportunity to liaise with these agencies and ease the registration processes. It is noteworthy that the CBE has already created a regulatory sandbox to help startup learn, test and discover new products under regulatory gaze of the regulator.

The Challenges

In all, while the provisions of the Act are generally commendable, and the Act can be a forward-looking legislation. However, as commendable as it is, there are obvious challenges to the implementation and practicality of the Act. Notably, a challenge surfaces with respect to the source of funding for the Startup Fund, the Act only under Section 19(2) references "sources approved by the Council"[70] but fails to define these approved sources. This portends the possibility of bureaucratic bottlenecks in the administration of the Fund. For instance, how will the Startup Investment Seed Fund be financed? Will companies be tasked? Will it come from the government's purse via deductions from the CRF or will this be done via PPP etc. this question needs to be answered timeously as it forms the basis for startups, investors and other stakeholders to participate in this initiative. Section 20 of the Act provides that the Fund Manager (Nigeria Sovereign Investment Authority) shall–

(1) Create an innovation grant budget and management framework to support research and development projects, and

(2) Issue a framework which shall set out modalities to fund, manage, and access the Fund.

This poses another challenge as it is only what has been presented as the budget by the Fund Manager that would be approved. The said budget

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[67] *Ibid,* s34(1)(a).
[68] *Ibid.*
[69] Ibid.
[70] Ibid, s19.

ought to have been subject to the approval of an independent body for instance the Council. Making the Fund Manager the sole maker of the budget may amount to giving them much power and without scrutiny (checks and balances) may result to excessive budget to satisfy their personal aggrandizement. Also, the application of the Act to the States of the Federation also poses a possible challenge to its implementation. In our view, it appears that the success of its implementation at the State government level is subject to the willingness and readiness of the State Governor to provide an enabling environment for the activation of the Act. For instance, on the 6th of December 2022 The Guardian Newspaper reported that in Lagos State, the Lagos State government are about to implement or domesticate the Act.[71] They have organised a policy review workshop to implement the NSA 2002 policies for the state's growth. They have established the Knowledge, Innovation, Technology, and Entrepreneurship (KITE) Project, which will equitably localise the Act to drive the ecosystem and boost innovation, each state, throughout the federation, needs to adopt distinct legislation that will help foster and deepen startup activity.[72]

Also, another pertinent question or concern is the requirement for sole proprietors or partnerships to transit to corporatization in order to enjoy the concession under the Act. Will this requirement not impoverish the states who before now had been the body responsible for collecting taxes from these entities? Will this requirement also not diminish the relevance of partnerships as a vehicle for investments in Nigeria? Perhaps these points need to be considered when the regulation pursuant to the Act is drafted.

Conclusion

Our problems are not rooted in the absence of beautiful pieces of policies or enabling laws, but rather in diligent implementation. It is therefore important that the federal government follows through with creating the environment necessary to attract the much-needed investment; not just for the startup companies but also for the development of the necessary

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[71] B. Nwannekanma, 'The Nigerian Start Up Acr 2022: Lagos moves to domesticate policy through Kite project.' TheGuardian Newspaper, 6 December, 2022.

[72] W. Igbintade, 'Lagos Begins Domestication of Nigerian Startup Act Through KITE Project.' www.thisdaylive.com accessed 10 December, 2022.

infrastructure required for businesses to grow and thrive. A clear implementation of the Startup Act, through tax and fiscal incentives for investors and even accelerators, would yield room for more attraction for funds from both local and international investors, which would positively impact the economy. In order to draw maximum benefit from the new legislation, establishing a multi-stakeholder implementation and collaboration would be critical for inclusive impact and sustainability.

Regulatory support provisions to link and collaborate with agencies of government will also help reduce the operational burdens for startups trying to scale such hurdles. The temptation for nepotism and every form of bureaucratic bottlenecks must be avoided if the law must thrive.

It is to the eternal benefit of the country for the present government and the incoming administration to ensure a robust implementation of the law by relevant agencies of government with support from other actors from the ecosystem, including the civil society and industry groups. With the Startup Act, Nigeria's tech ecosystem is expected to witness a much more structured, improved and enabling environment.

With the passage of the Act, it is envisaged that with proper implementation, Nigeria should experience an increased growth in the number of startups in the country. Also, with the growth in the number of startups, there should naturally be a growth in the number

of jobs available for Nigerians. Hence, this Act is expected to impact positively, the country's current unemployment rate of 33.3%.

The fiscal incentives (like Pioneer Status Incentive – PSI, 5% Withholding Tax, exemption from contribution to the Industrial Training Fund, access to export incentives and financial assistance, other tax exemptions etc) legislated in the Act should provide leverage for tech startups to grow their revenue and compete with larger players in the industry. The implementation of the Act will also relieve tech startups in Nigeria of some of the bottlenecks experienced before now, particularly in dealing with regulators in Nigeria as well as access to funds.

The Startup Act of 2022 is a welcome development in the Nigeria startup ecosystem as it presents a solid framework and infrastructure base for the development and deepening the startup business. Its provisions are clear proofs that the federal government and its key stakeholders are keenly interested in reshaping the country's startup ecosystem. The Act

represents a significant reform of Nigeria's innovation space and digital economy and is likely to boost the confidence of both local and foreign investors in the Nigerian technology sector. The timely implementation of the provisions of the Act is very pertinent considering the silence of the Act as to timelines for the composition of the Council, creation of the Portal and commencement of operations of NITDA as Secretariat. If the Act is efficiently and properly implemented by all the bodies and stakeholders, it will not only enhance foreign capital inflows to startups but improve Nigeria's ranking in the world's startup ecosystem index and positively grow the economy of Nigeria in various sectors.