

THE NIGERIAN STARTUP ACT 2022: HIGHLIGHTS OF KEY PROVISIONS



The Nigerian Startup Act (NSA) was signed into law on the 19th of October 2022. The Act provides the legal and institutional framework for the development and operation of startups in Nigeria. Its aim is to foster the growth and development of technology related skills in the country.

We have highlighted the key provisions and innovations in the NSA in an easy readable manner for you. We have highlighted:

1. Applicability of the Act and the Startup Label
2. Entities created under the Act and Regulatory Framework
3. Key Innovations

APPLICABILITY OF THE ACT AND STARTUP LABEL

Who does the Act apply to?

The Act applies to:

- a. Companies incorporated under the Companies and Allied Matters Act (CAMA) and granted the startup label, in accordance with the provisions of the Act
- b. Organizations and establishments, whose activities affect the creation, support and incubation of labeled startups in Nigeria.¹

The provisions of the Act apply not only to startups but also to other organizations and establishments linked to startups such as venture capitals, accelerators, incubators and investors.

What is a startup?

The Act defines a startup as a company in existence for not more than ten (10) years, with the objects being the creation, innovation, production, development, or adoption of a unique digital technology innovative product, service or process.²

The definition of startups under the Act stress two main features:

- A young company (less than ten years in existence); and
- Business objects relate to digital technology related products or services.

What is a labelled startup?

The Act recognizes some startups as labelled startups. An entity would be eligible to be labelled as a startup under the Act and issued a certificate to that effect if it meets the following conditions³:

- It is registered as a limited liability company under the Companies Law and has been in existence for a period of not more than ten (10) years from the date of its incorporation or registration;
- Its objects are innovation, development, production, improvement and commercialization of a digital technology innovative product or process;
- It is a holder or repository of a product or process of digital technology or the owner or author of a registered software;
- It has at least one-third local shareholding held by one or more Nigerians as founder or co-founder.

What is a pre-label status?

A sole proprietorship or partnership, if it has fulfilled all other conditions for the grant of a startup label may be granted a pre-label status for a period of six months to enable it fully incorporate as a limited liability company and fulfill other related conditions for the grant of a start up label⁴.

How long does a startup label last?

The startup label is valid for 10 (ten years) from the date of issuance⁵.

What is the effect of a startup label?

The Act provides that a labelled startup shall be granted access to the incentives provided under the Act.⁶

The incentives provided under the Act are:

Regulatory Support:

- Through the Startup Portal, a labelled startup has easy access and expedited application processes with regulatory bodies including the following:
 - i. Corporate Affairs Commission (CAC) – for company registrations and statutory compliance and filings;
 - ii. National Office for Technology Acquisition and Promotion (NOTAP) – for registration of technology transfer agreements;
 - iii. Trademarks, Patents & Design Registry – for registration of intellectual property rights such as patents, trademarks, copyrights and industrial designs;
 - iv. Central Bank of Nigeria (CBN) – For obtaining licenses and compliance for regulated start ups such as Fintechs; and
 - v. Securities and Exchange Commission (SEC) - For obtaining licenses and compliance for regulated start-ups such crowdfunding startups.
- Access to trainings and capacity building programmes for startups designed and implemented by the Secretariat or its partners such as the Industrial Training Fund (ITF).⁷
- Access to fast-track application processes for labelled startups seeking to participate in CBN's regulatory sandbox, SEC's regulatory incubation programmes or any other regulatory sandbox programmes set up by other regulators.⁸
- Assistance to labelled startups seeking to list on the Nigerian Exchange Limited (NGX) or similar stock and commodity exchanges operating in Nigeria.⁹

Tax Reliefs:

The Tax reliefs that accrue to a labelled startup under the Act are¹⁰:

- a. Eligibility for expeditious approval by the Nigerian Investment Promotion Commission (NIPC) of pioneer status. This is only applicable to labelled startups, which falls within industries captured under the extant Pioneer Status Incentive (PSI) Scheme. This status exempts companies from payment of companies' income tax for a period of 3-5 years.

- b. Eligibility for the exemption from payment of income tax or any other tax chargeable on its income or revenue for a period of up to 5 years under the Industrial Development (Income Tax Relief).
- c. Enjoyment of full deduction of any expenses on research and development that are wholly incurred in Nigeria.
- d. Exemption from contributions to the Industrial Trust Fund where the labelled startup provides in-house trainings to its employees.

The Act further provides that the Federal Government, through the Federal Ministry of Finance and other relevant regulatory agencies, shall offer additional fiscal incentives in the form of tax relief to Startups.

Financing:

A labelled startup has access to the following sources of financing/funding:

- Finance including early-stage finance from the Startup Investment Seed Fund.¹¹
- Export incentives and financial assistance from the Export Development Fund, Export Expansion Grant and the Export Adjustment Scheme Fund for labelled startups involved in the exportation of products and services deemed eligible under the Export (Incentives and Miscellaneous Provisions) Act.¹²
- Grants and loan facilities administered by the Central Bank of Nigeria, Bank of Industry or other statutory bodies empowered to assist SMEs and entrepreneurs.¹³
- Access to the Credit Guarantee Scheme.¹⁴

Encouraging Investments:¹⁵

- The Act mandates the Ministry of Finance and other relevant MDAs to develop and implement a national policy for incentives for individuals, impact investors, angel investors, companies, venture capitalists, private equity funds, accelerators or incubators which invest in a labelled startup or in the startup ecosystem to enjoy tax credits on their investment.
- An angel investor, venture capitalist, private equity fund, accelerator or incubator which invests in a labelled startup is entitled to an investment tax credit equivalent to 30% of the investment in the labelled startup. Such credit may however be applied on any gains on investment which are subject to tax.

- The Act excludes the charge of capital gains tax (CGT) on gains accruing to an angel investor, venture capitalist, private equity fund, accelerator or incubator with respect to assets held in relation to a labelled startup as long as the assets have been held in Nigeria for a minimum of 24 months.
- The Secretariat is to collaborate with CBN to guarantee repatriation of dividends or profits and proceeds, net of all taxes and other obligations by a foreign investor in the event of a sale or liquidation of the startup or any interest attributable to the foreign investor's investments through CBN's authorized dealer in freely convertible currency. The repatriation of investments in a labelled startup is to be carried out at the CBN's official foreign exchange rate, provided the foreign investor can present a Certificate of Capital Importation (CCI).¹⁶

How to obtain the label certificate?

The process of obtaining the start up label is carried out on the Startup Portal. An application in the prescribed form is submitted on the Portal along with the documents as may be prescribed by the Secretariat.¹⁷

Upon approval of the application, the name and particulars of the startup is entered in the register of startups and the certificate issued.¹⁸

What are the obligations of a labelled startup?

A labelled startup has the following obligations under the Act:¹⁹

- To comply with all extant business laws in Nigeria
- To provide information annually on the number of its human resources, total assets and annual turnover achieved from the period the startup label was granted
- To maintain proper books of accounts in accordance with reporting obligations under Nigerian law
- To provide an annual report on incentives received and advancement made by virtue of the incentives
- To notify the Coordinator of any change in structure, composition, or objects within one month of such change.
- To comply with any obligations set out after the issuance of the startup label.

Can the Startup Label be withdrawn?

The Startup Label can be withdrawn where a labelled startup defaults in any of the obligations, or fails to meet any of the eligibility criteria of the grant of the label; and fails to rectify such default within 30 days of being notified of the default by the Coordinator²⁰.

A startup whose label is withdrawn may upon the rectification of any default, apply to the Secretariat for a re-issuance of the startup label.²¹

ENTITIES AND REGULATORY FRAMEWORK

The National Council for Digital Innovation and Entrepreneurship²²

The Act establishes a council known as the National Council for Digital Innovation and Entrepreneurship ('the Council').

The President chairs the Council and the Vice-President serves as the Alternate Chairman. The Minister for Communications and Digital Economy serves as the Vice-Chairman while the Director General of the National Information Technology Development Agency (NITDA) serves as the Secretary.

Other members of the Council include: The Minister for Finance, Budget & National Planning; Minister for Industry, Trade and Investment; Minister for Science, Technology & Innovation; the Director General of the National Office for Technology Acquisition and Promotion (NOTAP); the Director General of the Securities & Exchange Commission (SEC); the Governor of the Central Bank of Nigeria (CBN); the Managing Director of the Bank of Industry (BOI); the Managing Director of the Nigeria Export Processing Zones Authority (NEPZA); the Chairman of the Federal Inland Revenue Service (FIRS); the Executive Vice Chairman of the Nigerian Communications Commission (NCC); and the Executive Secretary of the Nigerian Investment Promotion Commission (NIPC).

The Council also has representatives of the Startup Consultative Forum, the Nigeria Computer Society and the Computer Professionals (Registration Council of Nigeria).

The Act provides that the Council should meet not less than four times each year²³.

What are the functions of the Council?

The Council:

- Gives overall direction for the establishment and development of startups;
- Approves the programs of the Secretariat;

- Ensures the monitoring and evaluation of the regulatory framework to encourage development of startups in Nigeria;
- Provides grants to persons, research institutions and universities pursuing postgraduate programmes in the areas of science, technology and innovation.²⁴

The Secretariat of the Council

The Act makes National Information Technology Development Authority (NITDA) the Secretariat of the Council and the Director-General of NITDA serves as the head of the Secretariat.²⁵

What are the functions of the Secretariat?

NITDA, as secretariat is responsible for:

- Managing the process of labelling startups through the Startup Portal;
- Establishing and managing the Startup Portal;
- Appointing the startup coordinator for the Startup Portal²⁶
- Setting up the Startup Consultative Forum;²⁷
- Establishing public online platforms and other platforms to provide information on all matters pertaining to the establishment, development, incubation, acceleration, venture building programs etc. of startups;
- Collaborating with MDA (Ministries, Departments and Agencies) and other stakeholders to promote innovation in digital technology and enterprise development for startups
- Implementing the National Digital Innovation, Entrepreneurship and Startup Policy (NDIESP);
- Maintaining a directory of startups, incubators and accelerators.

The Fund Manager

The Act creates a Startup Investment Seed Fund to be managed by the Nigeria Sovereign Investment Authority (NSIA) as the Fund Manager.²⁸

The Fund Manager is to:

- i. Create an innovation grant budget and management framework to support research and development projects; and
- ii. Issue a framework that would set out the modalities to fund, manage and access the Fund.

KEY INNOVATIONS

The Startup Support and Engagement Portal ('the Startup Portal')

The Act mandates the creation of a Startup Portal²⁹. The portal is created by the Secretariat with the approval of the Council.

The portal would be used by startups to:

- Register with relevant
- Obtain permits and licenses as labelled startups
- Interact with the Federal Government, private institutions, angel investors, venture capitalists, incubators, accelerators, etc.
- Access information, tools and resources

The Portal is to be a one-stop shop for all things relating with the startup. The intent is for a startup to be able to navigate the multi-regulatory landscape through this single channel. This innovation, if properly implemented, will greatly increase regulatory certainty and compliance for startups.

Sections on the Portal

Corporate Affairs Commission:³⁰

The Secretariat is to collaborate with the Corporate Affairs Commission (CAC) to designate a separate section on the Portal for labelled start-ups to conduct transactions at the CAC. This is to ensure that the processes and transactions conducted by labelled startups at the CAC are done seamlessly and expeditiously.

Nigerian Copyright Commission & Trademarks, Patent and Design Registry³¹

Another section of the Portal is also to be designated to the Nigerian Copyright Commission and the Trademarks, Patent and Design Registry to ease registration of intellectual property for labelled startups

National Office for Technology Acquisition and Promotion (NOTAP)³²

The Secretariat is to collaborate with NOTAP to designate a separate section on the Portal for

labelled start-ups to process technology transfer registrations. This is to ensure that technology transfer registrations and other related activities are done seamlessly and expeditiously.

Central Bank of Nigeria (CBN) and Securities and Exchange Commission (SEC)³³

The Secretariat is to collaborate with CBN and SEC to designate a separate section on the Portal for labelled start-ups that operate as Fintechs to process their licenses.

The Startup Portal Coordinator

The Startup Portal would have a coordinator, appointed by the Secretariat with the approval of the Council³⁴. The coordinator must possess at least 10 years' experience in technology and entrepreneurship.

The Coordinator serves for a term of 2 years, which can only be renewed once.³⁵

The Startup Consultative Forum

The Act also mandates the creation of a Startup Consultative Forum ('the Forum'), which is to be set up by the Secretariat on the Portal³⁶. The forum comprises representatives from labelled startups, venture capitalists, angel investors, incubators, innovation hubs and two civil society organizations involved in the advancement of technology and innovation.

The purpose of the Forum is to create a platform for information sharing and collaboration in the Nigerian startup ecosystem.

Startup Investment Seed Fund

The Act establishes a Startup Investment Seed Fund ('the Fund') to be managed by the NSIA³⁷. The Fund, by its nature appears to be a statutory venture capital fund.

A sum not less than N 10,000,000,000 (ten billion naira) is to be paid into the fund annually from sources to be approved by the Council.

The Fund is to be used to:

- Provide capital/funding for labelled startups including early seed funding.
- Provide relief to technology laboratories, accelerators, incubators and hubs.

- The Act further mandates the creation of a Credit Guarantee Scheme ('the Scheme').³⁸

Credit Guarantee Scheme

The Scheme is to be created by the Secretariat and its purpose is to design to framework for credit guarantee for a labelled startup as well as provide accessible financial support to a labelled startup.

The Scheme is also to provide financial and credit information as well as financial management capacity building programmes to startups.

Crowd-funding

The Act recognizes crowdfunding and provides that startups may raise funds through crowdfunding intermediaries and commodities investment platforms licensed by the SEC.³⁹

With the provisions on crowdfunding in the Act, the SEC has the statutory backing to create the enabling regulatory framework on crowdfunding.

Accelerators and Incubators

While the Council shall develop a national accelerator and incubator policy for the establishment and development of accelerators and incubators, the Secretariat shall establish accelerator and incubator programmes for startups.⁴⁰

The Council shall also:

- Develop standards and guidelines to regulate relationships between national accelerators, incubators and startups
- Encourage and collaborate with existing accelerators and incubator programmes established by private organizations and
- Provide information on the Startup portal on existing accelerators and incubator programmes and the process of registration and admission into the programmes.

A register of accelerators and incubators is to be maintained by the Secretariat. The startup accelerators and incubators registered with the Secretariat shall be the ones entitled to the incentives as well as the grants and aids under the Act.⁴¹

Cluster, Hubs, Innovation Parks and Technology Development Zones

The Act empowers the Council to issue a framework for the establishment and operation of startup innovation clusters, hubs, as well as physical and virtual innovation parks in each state of the federation.⁴²

The secretariat is required to collaborate with the Nigeria Export Processing Zone Authority (NEPZA) to establish a Technology Development Zone (The Zone). This it to spur the growth and development of startups, accelerators and incubators.

¹ Section 2 Ibid	¹³ Section 19 Ibid	²⁵ Section 9 Ibid	³⁷ Section 19 Ibid
² Section 47 Ibid	¹⁴ Section 28 Ibid	²⁶ Section 11 Ibid	³⁸ Section 28 Ibid
³ Section 13 Ibid	¹⁵ Section 29 Ibid	²⁷ Section 12 Ibid	³⁹ Section 32 Ibid
⁴ Section 13(4) Ibid	¹⁶ Section 37 Ibid	²⁸ Section 19 & 20 Ibid	⁴⁰ Section 38 Ibid
⁵ Section 15(3) Ibid	¹⁷ Section 14 Ibid	²⁹ Section 10 Ibid	⁴¹ Section 39 Ibid
⁶ Section 13(6) Ibid	¹⁸ Section 15 Ibid	³⁰ Section 30 Ibid	⁴² Section 40 Ibid
⁷ Section 21 Ibid	¹⁹ Section 16 Ibid	³¹ Section 31 (3) (a) Ibid	
⁸ Section 35 Ibid	²⁰ Section 17 Ibid	³² Section 33 Ibid	
⁹ Section 36 Ibid	²¹ Section 18 Ibid	³³ Section 34 Ibid	
¹⁰ Section 24-29 Ibid	²² Section 3-6 Ibid	³⁴ Section 11 Ibid	
¹¹ Section 19 Ibid	²³ Section 1(4) Ibid	³⁵ Section 11 (3) (a) Ibid	
¹² Section 26 Ibid	²⁴ Section 7 Ibid	³⁶ Section 12 Ibid	

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