

Nigeria Startup Act

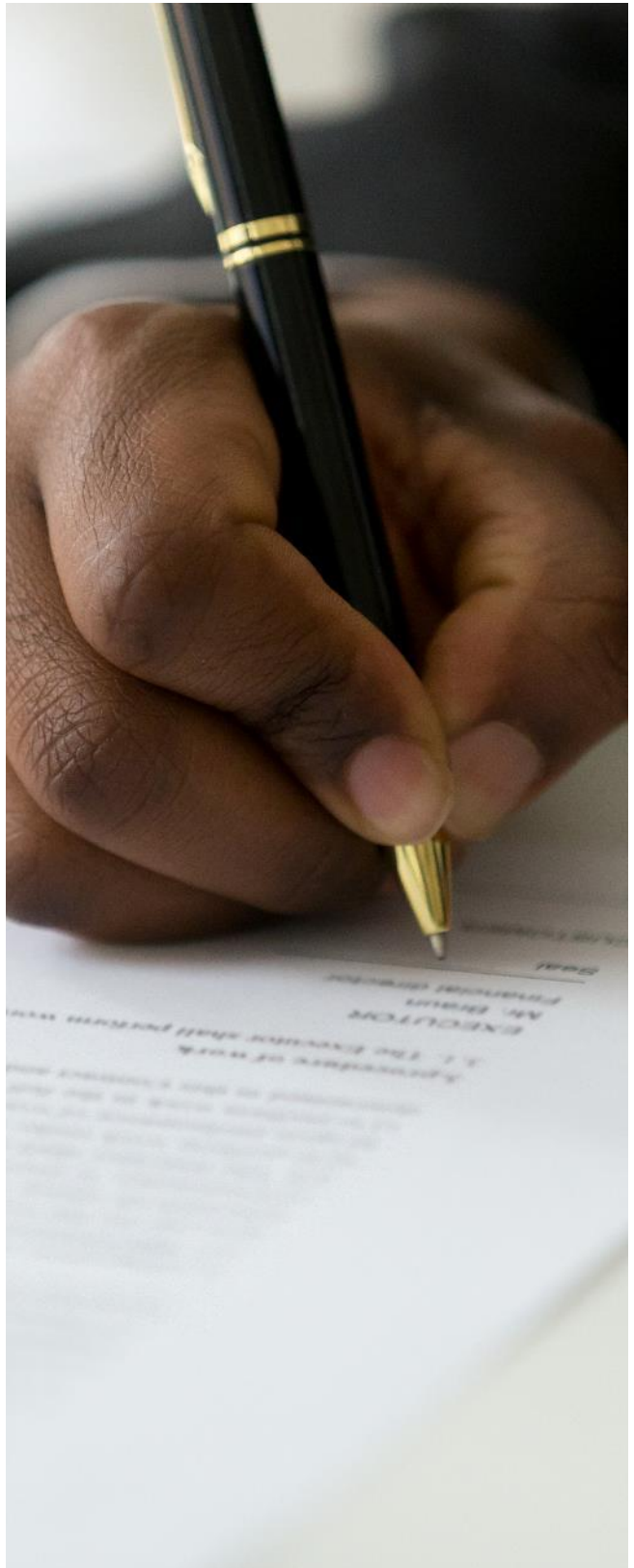
Positioning the
country for the
fourth revolution

November 2022



Introduction

In 2019, President Muhammadu Buhari launched the National Digital Economy Policy and Strategy (NDEPS), tagged “For a Digital Nigeria”. NDEPS is anchored on eight (8) pillars, i.e. Developmental Regulation, Digital Literacy and Skills, Solid Infrastructure, Service Infrastructure, Digital Services Development and Promotion, Soft Infrastructure, Digital Society and Emerging Technology and Indigenous Content Development and Adoption. These pillars are to create an enabling environment for entrepreneurship, economic productivity, create employment and promote inclusive growth.



According to McKinsey, the African Digital Economy is expected to grow to about \$300bn by 2025. Although Nigeria currently has the highest number of Unicorns in Africa (start-ups valued at \$1bn or more), and dominates the share of capital influx into the tech space on the African continent, the ratio of Unicorns to the population lags far behind most regions.

This presents a significant opportunity for further growth to bridge the digital divide. The World Economic Forum predicts that digital platforms will create close to 70% of new value over the next decade.

On 19 October 2022, the Nigeria Start-up Bill was signed into law and took effect immediately. We have provided the highlights of the new law as follows;

Key Provisions of the Act

Governance and Administration

The Act provides for a governance structure that involves a multi-membered council at a policy and operational level. Administration will be provided through an engagement portal to be managed by the council. Collaboration and sharing of information will be facilitated through a startup consultative forum that includes industry representatives.

National Council for Digital Innovation and Entrepreneurship

The Act establishes the National Council for Digital Innovation and Entrepreneurship (the Council) as a body corporate with attendant powers. The Council's membership comprises the President as its Chairman, the Vice-President as the Vice-chairman, the Minister of Communications & Digital Economy who will preside over the Council in the absence of the President and the Vice-President, the Director-General of the National Information Technology Development Agency (NITDA) as its Secretary, Ministers with specific portfolios, the Governor of the Central Bank of Nigeria, four (4) representatives of the Startup Consultative Forum, Nigeria Computer Society and Computer Professionals (Registration Council of Nigeria).

The functions of the Council include formulating and providing general policy guidelines for the realisation of the objectives of the Act, ensuring the monitoring and evaluation of the regulatory framework to encourage the development of startups in Nigeria among others. The Council is also empowered to review policies and directives of Ministries, Departments and Agencies (MDAs) which may affect the operation, establishment and investment in a startup.



Key Provisions of the Act



Secretariat of the Council

The National Information Technology Development Agency (NITDA) will be the Secretariat of the Council (the Secretariat) headed by the Director General of the NITDA. The Secretariat will carry out the following functions amongst others:



01

Manage the process of labelling a startup;



04

Maintain a directory of startups, incubators and accelerators;



02

Maintain platforms to provide access to information in relation to the startup ecosystem;



05

Support research and development activities relating to digital technology innovation and its commercialisation; and



03

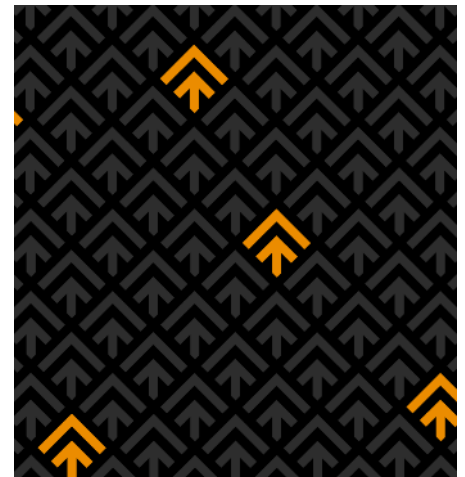
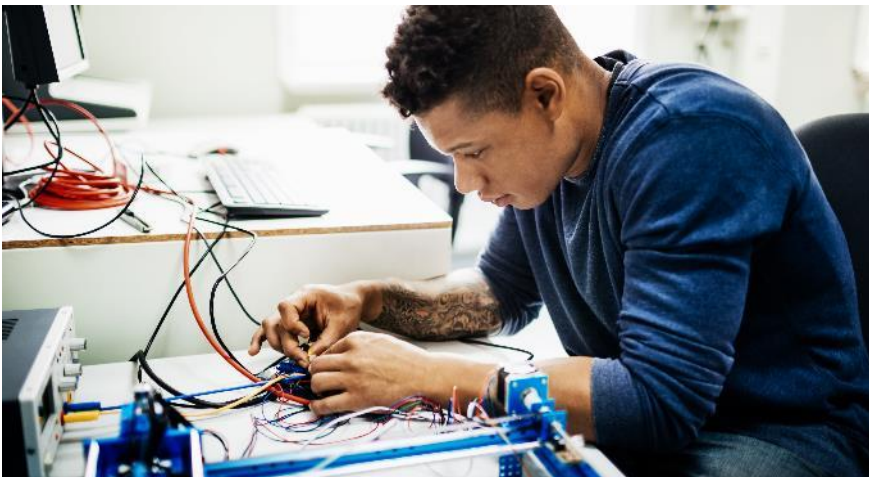
Enter into partnerships with local and international business incubators, accelerators and digital innovation hubs to promote the startup in Nigeria;



06

Advise the Council on issues affecting Startups and digital technology innovation entrepreneurship in Nigeria and matters connected with implementation of the Act.

The Secretariat is also ensure that the National Digital Innovation, Entrepreneurship and Startup Policy (NDIESP) of the Secretariat is implemented for the development of the startup ecosystem.



Key Provisions of the Act



Startup Engagement Portal

The Secretariat will establish, upon approval from the Council, the Startup Support and Engagement Portal (the Portal) as the primary platform through which a startup will conduct registration and other processes with government and other relevant stakeholders. These processes can vary from the issuance of permits or licences, provision of tools, resources and information to the receipt of complaints and recommendations. The Secretariat will appoint a Coordinator, subject to the approval of the Council, to manage the Portal.



Startup Consultative Forum

A Startup consultative forum (the Forum) is to be set up upon approval of the Council. The Forum will comprise of industry stakeholders and representatives of entities registered on the Portal including labelled startups, investors, civil society organisations etc. The Forum will provide a platform for information sharing and collaboration in the Nigerian startup ecosystem.

Startup Engagement Portal

A company must be labelled as a Startup to qualify for the benefits under the Act. A Startup label is a certificate issued by the Secretariat to a Startup upon fulfilment of the labelling requirements. A Startup is eligible for labelling under the Act where it is:

1

A Nigerian limited liability company and has been in existence for less than ten (10) years;

2

The objects of the company are innovation, development, production, improvement and commercialisation of a digital technology innovative product or process;

3

The company is a holder or repository of a product or process of digital technology, or the owner or author of a registered software;

4

Nigerian shareholder(s) hold at least one-third of the shareholding of the startup at incorporation;

5

Must submit an application on the portal in the prescribed form supported by documents prescribed by the Secretariat and have its name entered in the Startup Register kept for that purpose.

Key Provisions of the Act

A sole proprietorship or partnership that meets all the above requirements except being a limited liability company incorporated under the Companies and Allied Matters Act can apply. However such an entity will be granted a pre-label status for a period of six (6) months to enable it to convert to a limited liability company, upon which the company will be granted a labelled startup certificate. A startup label will be valid for 10 years from the date it is issued.

A labelled Startup has the following obligations under the Act:



- Ensure compliance with all laws governing business in Nigeria;
- Provide annually, information on the number of human resources, total assets and the annual turnover achieved from its approval date;
- Maintain proper accounting records in accordance with International Financial Reporting Standards;
- Provide a report on the utilisation of incentives annually;
- Inform the Coordinator of the Portal of any change in structure, composition, objects within one month of such change; and
- Comply with the obligations issued by the Coordinator of the Portal.

Where a Startup fails to meet its eligibility criteria or does not meet its compliance obligations as stated above, its Startup label can be withdrawn after a 30-day notice which avails the company time to rectify its non-eligibility or non-compliance status. Where the Startup label is withdrawn after the 30-day period, there is scope for the company to apply for a re-issuance of its Startup label.



Key Provisions of the Act



Startup Investment Seed Fund and other funding support

The Secretariat will set up a Startup Investment Seed Fund (the Fund) of not less than N10 Billion from sources to be approved by the Council. The Nigerian Sovereign Investment Authority will manage the Fund.

The Fund will provide labelled startups with early stage finance on the recommendation of the Fund manager and provide relief to technology laboratories, incubators and hubs. The Secretariat will also establish a Credit Guarantee Scheme and ensure that labelled startups have access to grants and loan facilities administered by the CBN, the Bank of Industry or other bodies statutorily empowered to assist small and medium scale enterprises.

Tax and other incentives

Labelled Startups and their investors are entitled to the following tax incentives:



Registered Startups

- **Pioneer Status Incentive:** A labelled startup is eligible to enjoy an income tax holiday for up to five (5) years and incentives in line with the Pioneer Status Incentive under the Industrial Development (Income Tax Relief) Act. The Pioneer Status Incentive covers software development and publishing and E-commerce businesses. The income tax relief period commences from the date of the issuance of the startup label and may be granted expeditiously upon application to the Nigerian Investment Promotion Commission;
- **Research and Development Relief:** A labelled startup will enjoy full tax deduction of research and development expenses wholly incurred in Nigeria;
- **Industrial Training Fund exemption:** A labelled startup will be exempted from contributions to the Industrial Training Fund where it provides in-house training to its employees during the period of the registration;
- **Export Incentives:** A labelled startup involved in the exportation of products and services will be entitled to export incentives and financial assistance from the Export Development Fund, Export Expansion Grant and Export Adjustment Scheme Fund;
- **Access to Grants & Loan Facilities:** A labelled startup will have access through the Secretariat to grants and loan facilities administered by the Central Bank of Nigeria, Bank of Industry or other statutory bodies empowered to assist small and medium scale enterprises and entrepreneurs;
- **Access to a Dedicated Credit Guarantee Scheme:** A labelled startup will have access to a dedicated Credit Guarantee Scheme to be established by the Secretariat for the development and growth of labelled startups;
- **Extended Tax Free Zone exemptions:** A startup licensed to operate in the Technology Development Zone will enjoy tax benefits contained in the Nigeria Export Processing Zone Act. Such incentives include exemption from all taxes.

Key Provisions of the Act

Investors

- 🔗 **Representation on the Startup Consultative Forum:** Investors are to be represented on the Startup Consultative Forum which will allow for contributions to deliberations on matters to be considered by the Council including policy proposals that will be relevant to the Nigerian startup ecosystem;
- 🔗 **Development of a National Policy for Incentives:** The Federal Government through the Federal Ministry of Finance and other MDAs are to develop and implement a national policy for incentives for individuals, impact investors, angel investors, companies, venture capitalist, private equity funds, accelerators or incubators that invest in a labelled startup or in the startup ecosystem to enjoy tax credits on their investments.
- 🔗 **Investment Tax Credit:** Investors in a labelled startup or in the startup ecosystem will enjoy tax credits on their investment. Such investment tax credits will be 30% of the investment which shall be applied on any gains on investment which are subject to tax.
- 🔗 **Capital Gains Tax exemptions:** Investors will enjoy capital gains tax exemption from sale of assets in relation to a labelled startup. This exemption is subject to a holding period of 24 months prior to such disposal. However, where the asset is disposed of within 24 months, the capital gains tax payable (where applicable) will be reduced by the investment tax credit.
- 🔗 **Repatriation of Investment:** Collaboration of the Secretariat and the CBN to guarantee repatriation of investment proceeds which is supported by a Certificate of Capital Importation.
- 🔗 **Access to Incentives:** Registered incubators and accelerators will be entitled to incentives in accordance with relevant regulations to be issued by the Secretariat. Such as access to grants (including grants under the Nigeria Digital Innovation, Entrepreneurship and Startup policy) and aids for research, development, training and expansion.



Talent development and capacity building

A key objective of the Act is to provide for the development and growth of technology-related talents. This objective will be achieved through collaboration with stakeholders in the public and private sectors. Such stakeholders will include National Universities Commission, National Board for Technical Education and other tertiary institutions regulatory bodies in Nigeria.

The Secretariat will support research institutions, develop centres for digital technology in the six (6) geopolitical zones and maintain a national database of research and innovation whilst the private sector will establish digital technology innovation parks and hubs in universities, polytechnics and other institutions of higher learning.

Ease of doing business

The legislative framework focuses on the ease of doing business for the labelled Startups in the following ways:

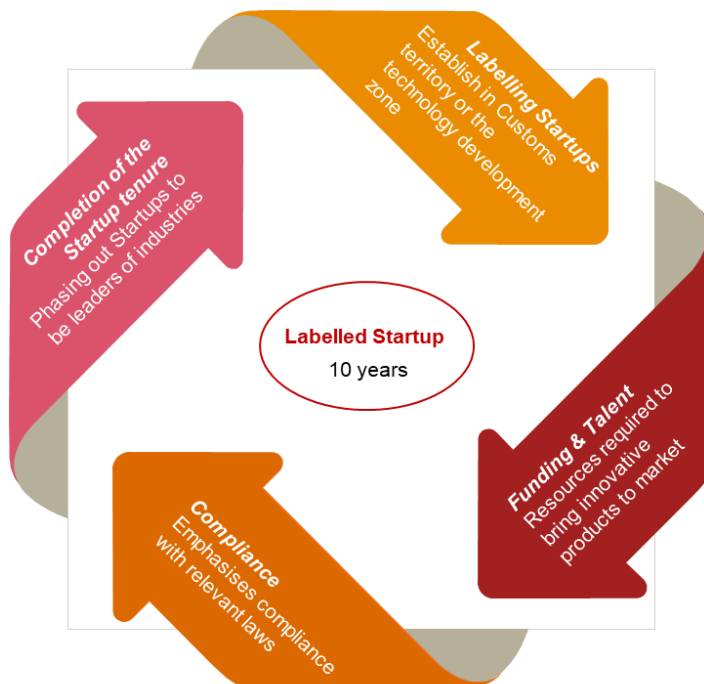
- 🌀 **Harmonisation of Regulations:** Set up of a Council that is focused on harmonisation of laws and regulations that affect a Startup;
- 🌀 **Collaboration among MDAs:** The Secretariat will collaborate with relevant Ministries, Departments and Agencies to promote innovation in digital technology and enterprise development;
- 🌀 **Commercialisation of Intellectual Property:** The Secretariat will ensure the holders of intellectual property rights are encouraged to exploit and commercialise these rights with a global perspective;
- 🌀 **Smooth facilitation of Registrations:** The Secretariat will collaborate with the National Office for Technology Acquisition and Promotion to ensure ease of technology transfer registrations and discounted registration fees;
- 🌀 **Quick Processing Time:** The Secretariat will collaborate with the Corporate Affairs Commission to leverage on the Portal to ease the processes for labelled Startups that conduct transactions at the Commission;
- 🌀 **Ease of registration for fin-techs:** Collaboration with SEC and the CBN to ease the registration of financial technology companies and fast-track the process to participate in the CBN's regulatory sandbox, SEC's regulatory incubation programmes or any other regulatory sandbox programmes set up by the regulator;
- 🌀 **Access to finance via listing on the Exchange:** The Council will encourage and assist labelled Startups to list on the relevant boards of the Nigerian Exchange Limited (NGX) or on similar stock and commodity exchanges operating in Nigeria; and
- 🌀 **Technology Development Zone:** The Secretariat will collaborate with the Nigeria Export Processing Zone Authority (NEPZA) to set up the Technology Development Zones and licence Startups, accelerators and incubators to operate in the Zones.



Startup ecosystem

The Council and Secretariat

- Administration of the provisions of the Act to achieve its objectives leveraging on technology “the Portal” which is an information repository and interactive platform.



Tax and other incentives

- Income and other tax exemptions;
- Access to the Free Trade Zone exemption;
- Full deduction for R&D costs; and
- Access to grants & loan facilities;

Innovation and Talent

- Promoting innovation clusters, hubs and parks.
- Assistance with Intellectual property registration, commercialisation and protection.
- Facilitates localising R & D and partnerships with international agencies.

Funding and Financial Management

Set up of the Startup Investment Seed Fund and Credit Guarantee Scheme. Easier access to government grants, loan and facilities. Incentives including tax for private sector funding and financial management capacity building programmes.

We expect that the inclusive nature of the council would facilitate a more cohesive implementation of the Act and improve the ease of doing business for qualifying startups. The council as contemplated in the Act however excludes the tax authorities. There should be involvement of the tax authorities perhaps through the Joint Tax Board to ensure a seamless implementation of the tax incentives.





In order to fully achieve the objectives of the Act, the following areas will need to be addressed;

Commencement date of the tax relief period: Based on the Act, the income tax relief period will commence from the date of issuance of the Startup Label. In practice, such companies are not usually profitable in the early years;

Alignment of startups in the customs territory and technology development zone (TDZ): According to the Act, labelled startups must be incorporated under the CAMA. The application of the above will bring ambiguity in the access to incentives by licensed entities, investors, incubators and accelerators operating in the TDZ. As an example, the withholding tax (WHT) to be applied by a labelled startup on payments for technical services by a non-resident supplier is 5% under the Act. However, a startup (not labelled under the Act) licensed to operate in the TDZ will have to deduct WHT at 10% under the Companies Income Tax Act. This difference in interpretation also applies to the CGT exemption upon divestment in a labelled startup which does not apply upon divestment of equity held in a startup licensed in the TDZ. This will result in unintended consequences and should be considered for a legislative amendment.

Tax filing practicalities: The collaboration with the FIRS will be required to ensure that the investment tax credit is confirmed and uploaded to the tax compliance platform i.e. TaxProMax where applicable. The scope of the investment tax credit should also be expanded to include investors in the TDZ and investors that provide non-equity funding through crowdfunding platforms.


Robustness of holding and finance structures: Founders who have sourced funds from US investors will need to review their corporate holding structures to ensure that their vehicles can be labelled startups and access benefits in the Act. There is also a need to future proof corporate structures in other locations and Nigeria to confirm which offers more effective exit strategies.

Investment Seed Fund: We expect that the source of finance for the Startup Investment Seed Fund should be through budgetary allocation or special government bond issuance but not another earmark tax as is the case with the existing NITDA or NASENI levies given the already high tax burden on businesses.



 **Takeaway**

The government engaged stakeholders widely in drafting the legislation showing a positive and collaborative approach to policy design. This is also evident in the governance structure which is required to stay abreast of the needs of the Startup ecosystem and provide necessary support accordingly. A core objective of the Act is to position Nigeria's startup ecosystem as the leading digital technology centre in Africa with world class innovators, cutting edge skills and exportable capacity. Israel has done this, driven by global based technology solutions. With a population of 9 million people, Israel has thousands of startups and it is the country with the 3rd most listed companies on the Nasdaq (a United States stock exchange market).



The Federal Government also provides the framework where such initiatives that border on digital technology can be accelerated leveraging tertiary education institutions, research organisations and technical partners (locally and internationally). This is expected to help address the talent development gap existing today in the industry. For instance, NITDA recently announced that it will train 30,000 Nigerians on blockchain technology which aligns with the National Digital Economy Policy and Strategy.

Effective implementation of the Act is essential to achieving its objectives and facilitating innovative solutions to global problems, delivered by budding Nigerian startups and techpreneurs. It becomes even more important that the various processes outlined in the Act to aid the growth of labelled Startups do not become unnecessarily bureaucratic as to impede the successful implementation of the Act.

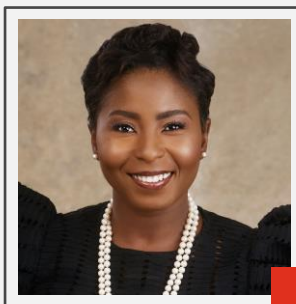


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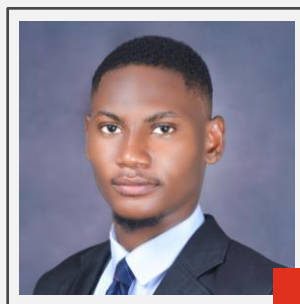
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