

WHAT STARTUPS AND INVESTORS SHOULD EXPECT FROM THE IMPLEMENTATION OF THE NIGERIA STARTUP ACT, 2022



INTRODUCTION

In 2021, African startups raised over \$4 billion across 355 funding deals, that is (almost three times what was raised in previous years¹) and the Nigerian fintech sector reportedly accounted for 63% of the funding raised. Additionally, out of the 10 unicorns coming out of Africa, 7 are Nigerian – Jumia, Flutterwave, Andela, Chipper Cash, Airtel Africa, Opay and Interswitch². The above statistics show that Nigeria is carving a niche for itself in the African and global digital economy. Arguably, the gains experienced by Nigerian startups have to a large extent been despite the legal and regulatory regime rather than because of it. The consensus within the Nigerian startup ecosystem is that government's regulation of this space should seek to foster stability and provide an enabling environment for innovation amongst its large youth population.

In the tech space, various policies and white papers have emanated from the government on how to move the information and communications technology (ICT) sector and digital economy forward and achieve desired gains³, but effective implementation has been slow in certain key areas including those related to ensuring a stable and cohesive legal framework for this sector, providing access to finance, providing support and the right incentives for both investors and budding businesses and ensuring an effective infrastructure and support

ecosystem. According to the World Bank's Nigeria Digital Economy Diagnostic Report 2019 (the "World Bank Report"), "while Nigeria's regulatory regime has improved, its regulatory rankings remain relatively weak when benchmarking with select peer markets, ranking 86th in the ICT Regulatory Tracker out of 190 countries, with the lowest score under Regulatory Authority."⁴

The large, young, and entrepreneurial population of Nigeria has been recognized as a great platform for digital entrepreneurship and an engine of economic transformation which can set the country on a new growth trajectory⁵ and ICT has been recognized as significantly contributing to the GDP and emerging as the country's most important long-term growth prospect⁶. Notwithstanding these promising trajectory, digital entrepreneurs continue to face investment challenges⁷, some of which could be improved by cohesive and enabling regulations.

It is against this backdrop that the Nigerian Startup Bill was conceived as an Executive Bill by the collective efforts of 30 tech leaders, the National Information Technology Development Agency ("NITDA" or the "Agency") and the Minister of Communication and Digital Economy Isa Pantami in 2021. The Nigeria Startup Bill, which was passed by the National Assembly in July 2022, received Presidential Assent on October 19, 2022 as an Act of the National Assembly. The

1. *How much did African startups raise in 2021?* | TechCabal

2. *Report: Nigeria's fintech sector accounted for 63% of startup funding in Africa in 2021* | TheCable (accessed 08 August 2022)

3. *Examples include the 2010 Masterplan and Roadmap for the Implementation of Information Technology for National Development; the National ICT Policy 2012; the Nigeria Communications Commission's (NCC) 8-Point Agenda; and more recently, the Nigeria ICT Road Map 2017–2020 and the Nigeria ICT Innovation and Entrepreneurship Vision (NIIEV) 2018 and the National Digital Economy Policy and Strategy 2019 amongst others.*

4. *The National Digital Economy Policy and Strategy* <https://1e8q3q16vyc81g8l3h3md6q5f5e-wpengine.netdna-ssl.com/wp-content/uploads/2019/12/NIGERIA-Fiinal-Web-REV.pdf>. See Page 16.

5. *The World Bank report, page 2.*

6. *The National Digital Economy Policy and Strategy* <https://www.ncc.gov.ng/docman-main/industry-statistics/policies-reports/883-national-digital-economy-policy-and-strategy/file>. Page 16. (*The National Policy and Strategy*)

7. *According to the World Bank Report, page 54 there is a dearth of early-stage investors in Nigeria and the aggregate nominal amount of startup investments as a percentage of GDP remains lowest in Sub-Saharan Africa at 0.06% compared to 0.93% in India, 0.32% in China, and 2.53% in the U.S. Angel networks and venture capital funds are in the nascent stages financing only 3% of start-ups in Nigeria.*

Nigerian Startup Act 2022 (“NSA” or the “Act”) seeks to provide for the creation and development of an enabling environment for technology-enabled startups in Nigeria and in this article, we would be highlighting key sections of the Act that speak to its objectives and applicability, eligibility of startups, the enabling environment created for startups and the benefits of the NSA to startups and investors.

2.0 OBJECTIVES OF THE NIGERIAN STARTUP ACT

The main objectives of the NSA are to - provide a legal and institutional framework for the development of startups in Nigeria; provide an enabling environment for the establishment, development and operation of startups in Nigeria; provide for the growth and development of technology related talent; and position Nigeria’s startup ecosystem, as the leading digital technology centre in Africa, having excellent innovators with cutting edge skills and exportable capacity.⁸

3.0 APPLICABILITY

The NSA applies to (i) companies incorporated under the Companies and Allied Matters Act (CAMA) 2020 which have been granted the startup label in accordance with the provisions of the Act and (ii) organisations and establishments whose activities affect the creation, support and

incubation of labelled startups in Nigeria.⁹ The NSA will not apply to an organisation which is a holding company or subsidiary of an existing company registered as a startup.¹⁰ **Section 13(1) of the Act** defines a startup label as a certificate issued by the Secretariat to a startup upon the fulfilment of the labelling requirements.

Criteria for eligibility of a startup for labelling are:

- a. The startup must be registered as a limited liability company under CAMA 2020, and must have been in existence for a period of not more than 10 years from the date of incorporation;
- b. The object of the startup are innovation, development, production, improvement and commercialisation of a digital technology innovative product or process;
- c. The startup is a holder or repository of a product or process of digital technology, or the owner or author of a registered software;
- d. It has at least one-third local shareholding held by one or more Nigerians as founder or co-founder of the startup; and
- e. In the case of a sole proprietorship or partnership, the startup satisfies the conditions set out in Section 13(2) paragraphs (b), (c) and (d).

8. See section 1 of the NSA

9. Section 2 of the NSA

10. Section 13(3) of the NSA

4.0 CREATING AN ENABLING ENVIRONMENT FOR STARTUPS

The need to create an enabling environment for technology enabled products and services stems largely from the vast and unimaginable solutions that can be created with technology, as well the potential for national development through a thriving digital economy. In recognition of this fact, the government released the **National Digital Economy Policy and Strategy (2020-2030) (the “National Policy and Strategy”) in 2019**. The World Bank Report and the National Policy and Strategy were anchored on several pillars, which capture what needs to be done to advance Nigeria's digital economy. The Pillars needed for change as identified in the World Bank Report are: Improvement of Digital Infrastructure for Connectivity; Strengthening of Digital Platforms; Increasing Access to Digital Financial Services; Creating an enabling Policy Environment for Digital Entrepreneurship; and Literacy in Digital Skills. The National Policy and Strategy also identifies certain Pillars of change for the development of Nigeria's digital economy which are - Developmental Regulation, Digital Literacy & Skills, Solid Infrastructure, Service Infrastructure, Digital Services Development & Promotion, Soft Infrastructure, Digital Society & Emerging Technologies and Indigenous Content Development & Adoption. The NSA takes on board some of the recommendations of the

World Bank Report and seeks to implement some of the objectives of the National Policy and Strategy which if properly implemented, could be a game changer for the digital startup ecosystem in Nigeria.

4.1 Digital Literacy: *In the area of digital literacy and the training of Nigeria's youth population, Part VI of the NSA provides for training, capacity building and talent development.*

Section 21 of the NSA establishes a Secretariat with the duty of organising training and capacity building programs for startups and creates a portal through which information can be disseminated to participants. These trainings will be facilitated in partnership with the Industrial Training Fund and other private organisations.¹¹ **The Act also makes provision for talent discovery and development by the Secretariat through partnerships with the National Universities Commission and Universities and Polytechnics within Nigeria to create modules, programs and workshops aimed at impacting knowledge necessary for the establishment and operation of startups in Nigeria.**¹² The focus on capacity building will also involve the Secretariat promoting and providing support to academic research institutions. The research institutions will create a linkage with the private sector, the federal government, and other stakeholders in the startup ecosystem.

4.2 Digital Platforms: One of the Pillars

11. Section 21(2) of the NSA

12. Section 22 of the NSA

captured by the World Bank Report and the National Policy and Strategy is the need to encourage and drum up support for Government Digital Services and the provision of robust digital platforms to drive the digital economy. **This is reflected in the establishment of a Startup Support and Engagement Portal**.¹³ This portal will be pivotal to the provision of an enabling environment to startups. The portal will facilitate the issuance of permits or licences to labelled startups, foster information exchange between various stakeholders in the Nigerian startup ecosystem, provide opportunities for startups to enter into contracts with the federal government through public procurement or other engagement processes and also provide a channel for receiving complaints and recommendations from industry stakeholders and the general public.

4.3 Promoting Digital Services Development: This Pillar recognises the need for the development of a robust, and vibrant digital ecosystem that will support innovation described by the World Bank Report as Innovation Driven Enterprises. **Part IX of the NSA**¹⁴ **provides for the establishment of accelerator and incubator programmes, clusters, hubs, innovation parks and technology development zones.** These centres are expected to provide a haven for innovation with the support of incubators.

4.4 Digital Security: The use of digital

platforms comes with attendant risks such as potential breach of privacy and other cybersecurity issues. Accordingly, there is a need for the security of digital platforms to be strengthened. The public should be confident in the use of digital technologies and in participating in the digital economy. **Section 43 of the NSA provides that data processed for the purpose of giving effect to the Act shall be compliant with the extant protection laws and regulations in Nigeria.**¹⁵ The draft Code of Practice for Interactive Computer Service Platforms/Internet Intermediaries which was released recently by NITDA also has as one of its objectives the safeguarding of the digital ecosystem for both Nigerians and non-Nigerians in Nigeria through the prescription of best practices and measures that would combat online harms like disinformation and misinformation.¹⁶ All these are geared towards strengthening the public confidence in using digital platforms and gaining traction for the digital economy.

5.0 SPECIFIC STARTUP FRIENDLY PROVISIONS

Other specific benefits the NSA provides to startups include:

5.1 Establishment of the National Council for Digital Innovation and Entrepreneurship and the Secretariat: The NSA establishes a council known as the National Council for Digital Innovation and

13. Section 10 of the NSA

14. This section covers section 40-42 of the NSA

15. The Nigerian Data Protection Regulation 2019 by NITDA. Also, it is instructive to note that there is a draft Code of Practice for Interactive Computer Service Platforms/Internet Intermediaries that NITDA released for public comments.

16. NITDA Code of Practices for Interactive Computer Service Platforms/Internet Intermediaries

Entrepreneurship (“the Council”).¹⁷ The Council is responsible for formulating policy and guidelines for the realization of the objectives of the NSA; monitoring the regulatory framework to encourage the development of startups in Nigeria; supporting digital technological development through grants to persons, research institutions and universities. The Council also has the power to review policies and directives of Ministries, Departments and Agencies of government (MDAs) which may affect the operation and establishment of startups and investments in startups.

The NSA also provides that NITDA shall serve as the Secretariat to the Council with the Director-General as the Chairman of the Secretariat.

5.2 **Creation of a Startup Support and Engagement Portal:**

The Startup portal is established to serve as a platform through which startups may carry out registration with relevant MDAs. As already stated, the portal will serve as a medium for facilitating the issuance of permits and licences to labelled startups, foster access to finance, information, innovation and the global market; provide opportunities for startups to enter into contracts with the federal government through public procurement, and serve as a platform for announcement and application for various schemes and incentives granted to startups by the federal government.

5.3 **Establishment of a Startup Consultative Forum:**

The NSA provides for the establishment of the Startup Consultative Forum (the “Forum”) on the startup portal by the Secretariat.¹⁸ The Forum is to serve as a platform for information sharing and collaboration in the Nigerian Startup Ecosystem and shall consist of industry stakeholders and representatives registered on the startup portal.¹⁹ Thus, in addition to regulating the technology ecosystem in Nigeria, we see the Council creating a friendly interface between the government and startups through the Secretariat.

5.4 **Startup Investment Seed Fund:**

The NSA establishes a fund known as Startup Investment Seed Fund (“the Fund”) to be managed by the Nigeria Sovereign investment Authority (“the Fund Manager”).²⁰ The Fund shall be applied to:

- a. provide a labelled startup with finance;
- b. provide early-stage finance for a labelled startup on the recommendation of the Fund Manager subject to the approval of the Council; and,
- c. provide relief to technology laboratories, accelerators, incubators and hubs.

In addition to providing a legal and institutional framework for tech enabled products or services, the NSA seeks to provide get-on finance to startups that are duly labelled under the NSA to encourage innovation and growth in the tech ecosystem. This is one of the fundamental pillars of the Diagnostic Report.

17. Section 3 of the NSA

18. Section 12(1) of the NSA

19. Section 12(2) of the NSA

20. Section 19 of the NSA

5.5 Tax and Fiscal Incentives: A part of the benefits that will accrue to labelled startups include various tax incentives²¹ which include existing fiscal incentives, as well as exemption from payment of income tax.²² These tax reliefs are expected to last for a period of five years. **Labelled startups are also entitled to certain export incentives and financial assistance from the Export Development Fund, Export Expansion Grant, and the Export Adjustment Scheme Fund.**²³

5.6 One Stop Shop: The NSA also provides for support between the Secretariat and regulators such as the Corporate Affairs Commission,²⁴ the Nigerian Copyright Commission and the Trademarks, Patent and Design Registries.²⁵ This collaboration would enable labelled startups register and conduct other transactions with these MDAs on the Startup Portal seamlessly.²⁶

5.7 Crowdfunding: The NSA has also made it easy for startups to source for funds outside of the usual methods of financing i.e., through angel investors or venture capitalists, by making provision for crowdfunding.²⁷ However, for the crowd fund to be valid, it must be done through crowdfunding intermediaries and commodities investment platforms which are duly registered by the Security Exchange Commission and they must have their platforms on the Startup Portal.

5.8 Stock Exchange Listing: Labelled startups would be eligible to secure the assistance of the National Council in getting listed on the board of the Nigerian Exchange Limited or on other stock or commodity exchanges that they seek to be listed on if they meet the eligibility requirements for listing.²⁸

5.9 Incubator and Accelerator Programs: The NSA also calls for the establishment of incubator and accelerator programs, and the creation of a national incubator and accelerator policy and guidelines that regulate the relationship between accelerators, incubators, and startups in the country. Startup accelerators and incubators registered with the Secretariat and actively operating in Nigeria shall be entitled to incentives and grants from the federal government.²⁹

5.10 Innovation Parks, Clusters, Hubs and Technology Development Zones: Another initiative of the NSA is the establishment and operation of startup innovation clusters, hubs, and physical and virtual innovations parks in every State of the federation.³⁰ These shall function as clusters where startups could coningle, share innovations as well as get assistance on registration, setup and expansion of their business into foreign markets.³¹

5.11 Technology Development Zones: The NSA also provides for the creation of Technology

21. Section 25(1) of the NSA

22. Section 25(2) of the NSA

23. Section 26 and 27 of the NSA

24. Section 30 of the NSA

25. Section 31 of the NSA

26. Section 33(1); Section 34(3)(a) of the NSA

27. Section 32 of the NSA

28. Section 36(1) of the NSA

29. Section 38(1) of the NSA

30. Section 40(1) of the NSA

31. Section 40(2) of the NSA

Development Zones (Zones) to encourage the growth and development of startups, accelerators, and incubators. Operators licensed to carry out activities within the Zones are entitled to incentives under the Nigeria Export Processing Zone Act.³²

6.0 BENEFITS FOR STARTUP INVESTORS

The NSA also benefits investors intending to invest in nascent labelled startups, by providing tax and fiscal incentives and reliefs which allows the labelled startups to operate in a startup friendly environment that encourages their growth and innovation. This aligns with the National Policy and Strategy's Pillar on the institution of Developmental Regulation.³³ Investors are eligible to benefit from tax and fiscal incentives such as the Pioneer Status Incentives Schemes established by the Nigerian Investment Promotion Commission (NIPC).³⁴ Another incentive available to a labelled startup is exemption from contributions to the Industrial Training Fund where the startup provides in house training to its employees within the period it is designated as a labelled startup.³⁵ Tax relief on income tax or any other tax chargeable on its income would be available to eligible labelled startup for a period of five years.³⁶

Also, the NSA provides for the establishment of a Credit Guarantee Scheme³⁷ that will be beneficial

primarily to labelled startups as well as to investors. The Credit Guarantee Scheme is expected to provide access to financial support for labelled startups, create a framework for credit guarantee for labelled startups, provide labelled startups with financial and credit information and also make available to them, financial management capacity building programmes.³⁸

More specific to investors under the NSA is the national policy for incentives that the Federal Ministry of Finance and other MDAs are mandated to develop and implement under the Act for investors, including angel investors, venture capitalists, private equity funds etc. This entitles them to enjoy tax credits on their investments.³⁹ Specifically, the NSA provides that notwithstanding the provisions of the Companies Income Tax Act, investors which invest in a labelled startup shall be duly entitled to an investment tax credit equivalent to 30% of the investment in the labelled startup.⁴⁰ They are also exempt from Capital Gains Tax that accrue from the disposal of assets by investors with respect to a labelled startup.⁴¹

7.0 CONCLUSION

The Nigerian Startup Ecosystem has experienced astronomical growth over the past few years with a lot of startups gaining international attention and repute for their innovation and viable solutions, but like every other industry, effective regulation

32. Section 42 of the NSA

33. The National Digital Economy Policy and Strategy <https://1e8q3q16vyc81g8l3h3md6q5f5e-wpengine.netdna-ssl.com/wp-content/uploads/2019/12/NIGERIA-Fiinal-Web-REV.pdf>. See Page 22.

34. Section 24 of the NSA

35. Section 25(5) of the NSA

36. Section 25(2) of the NSA

37. Section 28(1) of the NSA

38. Section 28(2) of the NSA

39. Section 29(1) of the NSA

40. Section 29(2) of the NSA

41. Section 29(3) of the NSA

is one of the bedrocks of institutionalisation and success. The NSA is set to actualise this by ensuring that the startup ecosystem operates under a friendly regulatory framework that is attractive for foreign direct investment and encourages innovation. In the coming months, we will keep tabs on the implementation process of the NSA.

CONTRIBUTORS



ADEREMI FAGBEMI

Partner, Tope Adebayo LP

E: a.fagbemi@topeadebayolp.com

P: +234 (0) 8099927408



OLUWASEUN FAPOHUNDA

Associate, Tope Adebayo LP

E: s.fapohunda@topeadebayolp.com

P: + 234 1 628 4627



AZEEZAT OGUNSOLA

Associate, Tope Adebayo LP

E: a.ogunsola@topeadebayolp.com

P: + 234 1 628 4627

Do you need to get in touch with us, to know how we can help you and your business?
Please contact us using any of the details provided below:

TOPE ADEBAYO LP

25C Ladoke Akintola Street, G.R.A. Ikeja Lagos, Nigeria

p: +234 (1) 628 4627

e: info@topeadebayolp.com

w: www.topeadebayolp.com

