

The Startup Act series

An overview of The Startup Act, 2022

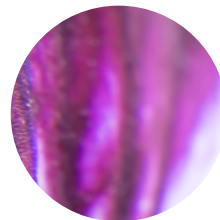
Grow | Protect | **Operate** | Finance

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Introduction

On the 19th of October 2022, President Muhammadu Buhari signed the Startup Act (the Act). The Act is a significant legislation for the Nigerian technology and innovation ecosystem as Nigeria has increasingly become a prime destination for startup funding in Africa despite inadequate regulatory framework. In 2021, out of the \$4 billion startup funding in Africa, Nigeria attracted the largest portion of \$1.37 billion¹. Also, in 2021 several start-ups were each valued at \$1 billion (specifically Flutterwave (founded in 2016), Opay (founded in 2018) and Andela (founded in 2014)) with the space receiving over \$1.3 billion in investment. The passing of the Act was therefore necessary to pave way for a legal and regulatory framework that offers clarity to the operations of startups in Nigeria.

We will commence this four-part series with an overview of the Act which will subsequently be followed by a review of the incentives available in the Act for startups. A key consideration for doing business in Nigeria is the sectoral regulatory framework, accordingly, the third series will examine the regulatory regime under the Act. In the concluding part of the series, we will focus on the financing regime proposed under the Act and highlight general financing options for Startups.



1. <https://businessday.ng/technology/article/local-investors-outperform-foreign-peers-in-africas-startup-funding/>

Objectives of the Act

The Act seeks to provide a legal and institutional framework particularly for the development of fintech startups in Nigeria. The other objectives of the Act include²:

- a. providing an enabling environment for the establishment, development, and operation of startups in Nigeria;
- b. fostering the development and growth of technology – related talent; and
- c. positioning Nigeria’s start up ecosystem as the leading digital technology hub in Africa, having excellent innovators with cutting edge skills and exportable capacity.

Key Highlights of the Act

- a. **Scope:** The Act applies to companies incorporated under the Companies and Allied Matters Act which are granted a startup label in accordance with the provisions of the Act, and to organizations and establishments whose activities affect the creation, support and incubation of labelled startups in Nigeria³.
- b. **National Council of Innovation and Entrepreneurship:** The Act has established the National Council of Innovation and Entrepreneurship (the Council)⁴. The functions of the Council include: the formulation and provision of general policy guidelines; giving overall direction for the harmonization of laws and regulations that affect startups; monitoring and evaluating the regulatory framework to encourage the development of startups in Nigeria.
- c. **Appointment of a Secretariat:** the Act has also appointed the National Information Technology Development Agency (NITDA) as an administrative department (the Secretariat) for the purpose of carrying out its operations. The NITDA is expected to issue certificates to qualified startups (Startup Labelling); maintain a directory of startups, incubators, and accelerators; collaborate with the relevant ministries, departments, agencies, and other stakeholders, amongst other duties⁵.

2. Section 1(1) Nigerian Startup Act, 2022

3. Section 2(1)

4. Section 3(1)

5. Section 9(1) & (2)



- d. Crowdfunding:** with the coming into force of the Act, startups are now able to raise funds through crowdfunding intermediaries and commodities investment platforms duly licensed by the Securities and Exchange Commission of Nigeria (SEC) that would have their platforms available for use by startups on the Startup Portal.⁶ The Council is required to provide recommendations and proposals to SEC and collaborate towards ensuring that SEC considers rules that fast-track crowdfunding processes for labelled startups.
- e. The Startup Portal:** The Act creates a startup support and engagement portal. The startup portal is expected to bridge the gap between startups and regulatory authorities⁷ and serve as the platform through which a startup conducts registration process with the relevant MDAs. The Secretariat is mandated to collaborate with the Corporate Affairs Commission (the “CAC”) to designate a separate section on the Startup Portal to ease the processes for labelled startups that conduct transactions at the CAC.
- f. Protection of Intellectual Property Rights:** under the Act, the Secretariat is required to collaborate with the Nigerian Copyright Commission and the Trademarks, Patent and Design Registries to ensure that the registration and protection of the intellectual property of labelled startups are seamless and expedited⁸.
- g. Startup Investment Seed Fund:** a Startup Investment Seed Fund (the Fund) has been created under the Act. The Fund will be managed by the Nigeria Sovereign Investment Authority (NSIA) as fund manager. The Fund will receive ten billion naira (N10,000,000,000) annually from sources approved by the Council, and will be applied towards providing a labelled startup with finance, provide relief to technology laboratories, accelerators, incubators, and hubs⁹.
- h. Provision for Tax and Fiscal Incentives:** labelled startups, their employees and investors are expected to benefit from tax and fiscal incentives which broadly include exemption from the payment of income tax for a specified period - commencing from the issuance of the startup label; full deductions for in-country research and development; payment of a five percent withholding (as final tax) on income of non-resident companies providing services for labelled startups; and exemption from Industrial Training Fund with certain conditions. It is important to note that only labelled startups are eligible to enjoy the incentives set out in the Act¹⁰.

Conclusion

In the light of dwindling oil revenue, technology offers Nigeria a chance to diversify its revenue base and accelerate economic development. However, to achieve these objectives and promote investors’ confidence, proper implementation of the Act is key to creating an enabling environment for growth and protection of investments in tech start-ups.



6. Section 32(1), means the startup support and engagement portal created under section 10 of this Act

7. Section 10(1)

8. Section 31 (4)

9. Section 19

10. Section 13 (6)