

**AN OVERVIEW OF THE NIGERIA STARTUP ACT OF 2022 AS A REGULATORY  
FRAMEWORK FOR AN EMERGING ECOSYSTEM.**

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**Abstract**

*Globally, technological advancements are at an all-time high. This evolution presents unprecedented opportunities for growth and development for Nigeria and the continent of Africa. On a global scale, the former, based on the growth of its startup ecosystem, ranked 2<sup>nd</sup> in the hierarchy of advanced ecosystems in Africa and 131<sup>st</sup> among 190 countries in 2019 globally. Presently, startup businesses are springing up at a very fast rate all over the world. This is, however, not without the incidences of cybercrime, environmental factors, funding challenges, and other problems. This led to the need to regulate the startup business ecosystem and the enactment of the Nigeria Startup Act 2022. This is a laudable effort because previous literature on startup businesses and their effect on the economy gave no consideration to the legal frameworks regulating them. This paper is an overview of the said Act. It examines its operations and objectives for stakeholders involved in startup business and its adequacy as a legal framework regulating an emerging startup ecosystem in Nigeria. In conclusion, the paper offers recommendations for sustaining startup seed funds through the provision of regulations limiting the amount investable per time and the recovery time limit. An increase in incentives to support the growth of startups is also suggested. Companies seeking to be registered as a startup but are still undergoing incorporation processes should be given a provisional label to allow them to start, while registration of the startup label focusing on local markets is advocated for.*

**Keywords:** Startup, innovation, accelerators, incubators, ecosystem, Tech hub.

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## **Introduction**

Sectors involved in the high-technology (high-tech)<sup>2</sup> industry are characterized by companies whose core business is to produce and /or distribute advanced-technologically based products and services to the public. In the 1980s, the most commonly identified high-tech sectors were the computer and software ones, while the internet world dominated the scene in the 1990s.<sup>3</sup> Today, the concept of high- tech embodies a much wider category of industries and sectors.<sup>4</sup> The last few decades have seen the rise of disruptive technologies that have totally revolutionized human beings' way of life with innovations such as artificial intelligence, sintered technology (SINTECH), social media, nuclear power, robot telecommunication, healthcare, biotechnology, sharing economy-based businesses, and cloud-based computing.<sup>5</sup> From the 1990s till date, the world has witnessed enormous growth in technology with exponential economic gains before the bubble exploded in the US. The release of *Mosaic*, the first web browser, gave every computer user the possibility to access the World Wide Web, Facebook, Amazon, Apple, Netflix, and Google (FAANG) with semiconductor and computer companies achieving astonishing economic performance and growth.<sup>6</sup> A startup, being an innovative company<sup>7</sup> struggling to find its feet in the market, has a lot to gain from the legal frameworks that are in place. Globally, increasing numbers of startups are springing up daily. Nigeria, being the third country in Africa to enact a Startup Act, is not an exception. It enacted its Startup Act in 2022<sup>8</sup> to regulate its tech startup ecosystem.<sup>9</sup> Statistically, Nigeria ranks 61 out of 100 countries according to Startup Blink<sup>10</sup> and 131 among 190 countries in 2019, going by the World Bank index ranking of ease of doing business index.<sup>11</sup> As of September 2022, about 481 tech startups were already existing in Nigeria, serving as employers of labor for over 19,000 people.<sup>12</sup>

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<sup>2</sup> Abbreviated as high-tech which signifies the most advanced state of technology in a given moment.

<sup>3</sup> M. Alberini 'Venture Capital Ecosystem and its contribution in the High Tech Industry. An Empirical Analysis of the Softbank investment vehicle The Vision Fund' (Master Degree Thesis, Department of Economics & Management, LUISS University 2019/2020) p.20.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Section 47 of the Nigeria Startup Act, 2022, defines startup ecosystem to mean an environment comprising entrepreneurs, startup, capital providers, Federal Government and other stakeholders that interact to aid a startup. A startup is any company that uses an innovative solution and the invention could be a business strategy, product, service or a process.

<sup>8</sup> Nigeria Startup Act, 2022, Act No. 32, Federal Republic of Nigeria Official Gazette, No. 188, dated 21<sup>st</sup> October, 2022, Vol.109.

<sup>9</sup> The startup ecosystem index 2021 evaluates 1000 cities and 100 countries worldwide Startup Blink's definition, Global start up Ecosystem index < <https://byjus.com>>current- affairs accessed 15<sup>th</sup> August 2023. Ease of doing Business in Nigeria, 2011-2019.

<sup>10</sup> Statista Research Department, Dec.20,2023 <https://www.statista.com>>statistics.

<sup>11</sup> Ibid.

<sup>12</sup>A. A depetun 'Nigerian startups attracted \$ 1. 37 Billion of Africa's & \$4B of funding in 2021' ( The Guardian,2021 /Dec.8) <<https://guardian.ng/technology>> accessed 14<sup>th</sup> August, 2023.

The Tunisia Startup Act of 2018<sup>13</sup> and the Senegal Startup Law of 2019<sup>14</sup> opened the way for other countries to enact their own laws. Italy enacted its law in 2012,<sup>15</sup> Argentina in 2017,<sup>16</sup> and the Philippines in 2018.<sup>17</sup> Fintech startups are also springing up at a very fast rate. Hence, regulation was by way of a legislative framework, as mentioned above.<sup>18</sup>

The Nigeria Startup Act 2022 is thus a significant<sup>19</sup> legislation for the Nigerian technology and innovation ecosystem. It creates an enabling environment for technologically-enabled businesses. It also creates funding, infrastructure, and regulations for startups. A young and emerging startup is characterized by a high rate of innovation and a fast growing business that aims to meet market needs by developing a valuable business model around an innovative product, service process, or a platform.<sup>20</sup> Startups<sup>21</sup> existence and life span are usually limited in time and innovation, with larger scale of operations and strong growth potential. Startups actually cater to small economies, which makes them more significant in Africa and less popular outside. In countries such as Finland, the Netherlands, Scotland, France, India, and Israel, laws entrenching startup policies are set apart from a specific codified startup Act. Such policies are different from provisions entrenched in a Startup Act, which is a codified law in a singular document with detailed provisions for regulation, funding, registration, coordination, etc. of a startup label.

### **Statement of the Problem**

Globally, startups face common and sometimes different challenges. Most of them struggle with finances and lack of access to funding. In the U.K., for instance, research indicated that, owing to full rationing by banks, applications for funds by innovators and innovating firms were rejected. They stopped applying, and about 230,000 small firms made the choice to self-exclude in an average year. The effects on the firms included a dwindling growth level, and a detrimental effect on their ability to create new jobs and make more sales.<sup>22</sup> Most businesses are unable to break even. Obtaining external funding, particularly from banks, becomes a problem as most startups are

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<sup>13</sup> Tunisian Startup Act ,(Law 20-2018) issued April 17<sup>th</sup> ) updated with the Decree issued 11<sup>th</sup> October, 2018.

<sup>14</sup> law 17/2019 on 27<sup>th</sup> December; Congo also signed up in 2022.

<sup>15</sup> Decree law no.179 of 18<sup>th</sup> October, 2012 (so called “the Italian Startup Act”).

<sup>16</sup> Ley 27349, apoyo al capital emprendedor, 29<sup>th</sup> March 2017.

<sup>17</sup> The Republic Act No. 11337 also known as the Innovative Startup Act was signed into law in April 26, 2019. It is an Act providing benefits and programs to strengthen, promote and develop the Philippine Startup Ecosystem.

<sup>18</sup> Nigeria Startup Act, 2022, Section 16 (1) a- f; 34 (1) (a), (b); Finnovating for Africa- how African fintechs are solving inclusion <https://disrupt-africa.com/2024/10/18/from-m-pesa-onwards-african-fintech-is-solving-for-accessibility-but-innovating-on-top-of-the-rails/?amp=1>.

<sup>19</sup> Innovation was defined as motor of economic change. Creation of Innovative Union was proposed by the European Commission in 2020.

<sup>20</sup> N. Robemed ‘what is a startup?’ [2016] <www.Forbes.com> accessed 11<sup>th</sup> July, 2023.

<sup>21</sup> Exits of some startup and creating of unicorns have triggered globalization of phase ecosystem into expansion and global resource attraction.

<sup>22</sup> Ross Brown and Marc Cowling, ‘The Uneven spatial Nature of Access to External Finance in UK SMEs: Determinants, impacts and the “Levelling up” Agenda’ ERC Research paper 100, June {2022} p.8.

not able to provide the required collateral.<sup>23</sup> Other problems include, but are not limited to, poor infrastructure, unfavorable government policies, financial challenges, the unavailability of human resources and support mechanisms from the ecosystem, environmental elements<sup>24</sup> and other factors.<sup>25</sup> Also, regulators compete with innovators and entrepreneurs, causing hindrances to desired growth.<sup>26</sup> There is also the problem of skyrocketing valuation of high-tech companies' capital bases. Most of the time, such valuations do not reflect the real financial performance of the startup but rather the result of venture capitalists' and private investors' valuations, which participate in the financing rounds of the business. Obtaining external funding is especially difficult for startups. This is because their innovative component is not usually open to the public.<sup>27</sup> This secrecy, also referred to as the lack of information about the knowledge base of startups, has not been helpful towards their getting external funding.<sup>28</sup> It is the reason most startups' goals and objectives are not usually clear to investors.

Furthermore, it is easier for a startup to ask family members and friends to invest in its growth through what is known as bootstrapping finance solutions. This operates without pushing for quarterly results, profitability proof, or sustainable business models. This often leads to the emergence of companies with uncertain profit margins. This erodes the public's trust. Doing so would be at their own risk. Startup companies' volatility makes them unstable, thereby discouraging investors. In addition, the capital market is reluctant to finance startups. Startup firms' viability is yet to be proven. This is so because many of them are disruptive in nature and can change their industry of origin at any time in the course of operations.<sup>29</sup> Moreover, while many startups have highly skilled workers with the technical know-how, they often lack the financial and managerial competence necessary for the running of the startup.<sup>30</sup>

## **Types of Startups**

Startups can be divided into 8 categories as follows:

### **1. Technology**

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<sup>23</sup> M. Cowling & ors.'The innovation Debt penalty: cost of Debt, Loan Default and the effects of a public Loan Gurantee on High- Tech Firms'' Technological forecasting and social change' {2018} 127,166.

<sup>24</sup> K. Aina & anor 'Regulation of Corporate Sustainability by Nigerian Companies' [2022] Pacesetter Law Journal, Vol.1 No1.202.

<sup>25</sup> Salamzadeh, Aidin & ors.'Startup Companies: Life Cycle and Challenges, Proceedings of the 4<sup>th</sup> International Conference on Employment, Education and Entrepreneurship' {2015} (EEE), Belgrade, Serbia.

<sup>26</sup> M. Alberini 'Venture Capital Ecosystem and its contribution in the High Tech Industry. An Empirical Analysis of the Softbank investment vehicle The Vision Fund' (Master Degree Thesis, Department of Economics & Management, LUISS University 2019/2020) p.73.

<sup>27</sup> Ibid.

<sup>28</sup> G. Ferrarini, 'Corporate Disclosure as a Transaction Cost. The case of SME' European Review of Contract law {2013} 9.363.

<sup>29</sup> M. Alberini p.74.

<sup>30</sup> Ibid , p.13.

Technology, as the name implies, focuses on new technology and software solutions to solve problems. Examples are the Global Center for High Technology in the United States of America, Silicon Valley Bank (SVB),<sup>31</sup> and Investment in Digital and Creative Enterprises (I-DCIE). Others include SpaceX,<sup>32</sup> Tesla, open space, and open AI.

## **2. Social**

Social startups combine business goals with the goal of creating a positive social or environmental impact. Examples are Lush, Toms, good eggs, etc.

## **3. eCommerce**

Startups of this type primarily operate online retail. Products are displayed online to reach people locally and globally.

## **4. Fintech**

Financial technology startups operate with innovation in the financial sector. Examples are Opay, Kuda, Palm Pay, Chipper Cash, Cowry, Coinbase, Betterment, etc.

## **5. Healthtech**

It makes use of healthcare and technology to provide innovative solutions. Examples are the e-health startup platform, Reliance Health, etc.

## **6. SaaS**

It is a type of technology startup that offers software applications or services through a subscription model. An example is Zoom.

## **7. Biotech**

Biotech startups use innovative solutions in the biotechnology field of using living organisms or biological processes to create new products or processes, often found in healthcare, agriculture, or environmental sustainability. Examples are Thrive Agric, Editas Medicine, etc.

## **8. Education Startups**

Educational startups leverage technology to enhance accessibility, engagement, and personalized learning experiences. Examples are online learning platforms, educational games, etc.

Other ways of distinguishing startups are by categorizing them into the following:

- a) Life style.
- b) Small business.

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<sup>31</sup>referred to as the 16<sup>th</sup> largest bank, U.S bank, also known as startup bank, held deposits of almost half of all U.S venture –backed start-ups,it was sold to First Citizens Bank which helped to assuage depositors fear of losing access to their funds.< <https:// Disrupt- Africa. com> latest report> accessed 4<sup>th</sup> of June, 2023.

<sup>32</sup> Revolutionizing Space technology for accessible and affordable space exploration.

- c) Scalable business.
- d) Buyable business.
- e) Large company and social startups.<sup>33</sup>
- f) Delivery startups like Glovo, Jumia, CredPal.

As of 2022, the number of startups in Nigeria was estimated to have exceeded 3,360, the highest number in Africa. Internationally, there is Y.C 9 Africa,<sup>34</sup> the Global Center for High Technology in the United States of America, and Silicon Valley Bank (SVB).<sup>35</sup>

## **Nigeria Start up Act 2022**

The Nigeria Startup Act is divided into 10 parts. They are as follows:<sup>36</sup>

### **1. Objectives and Application of the Act**

The objectives of this Act are stated in Sections 1(a)-(d)<sup>37</sup> of the Act. The target is to institutionalize Nigeria's startup ecosystem, regulate, and encourage the maturing and advancement of technological-related innovations. This is for the eventual positioning of the Nigerian startup ecosystem as the leading digital innovation center in Africa. For these objectives to be achieved and sustained, stakeholders such as employees, product consumers, suppliers, and the community where the startups are located should be considered. The duty to prioritize the relevance of the startup label to the ecosystem and to the world at large, while identifying the stakeholder group, is crucial to sustaining these objectives.<sup>38</sup> To be recognized under the law, a startup must be a registered company under the Companies and Allied Matters Act, and must have been in existence for a period of not more than 10 years after incorporation.<sup>39</sup> In other words, the Act only recognizes incorporated companies, excluding enterprises, partnerships, and others. This may pose difficulties

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<sup>33</sup> I. Arogbonlo, 'Analysis: Top 10 Nigerian tech startups in 2022' (Nigerian Tribune 3 Jan. 2023).

< <https://tribuneonlineeng.com/top1> > accessed on 25<sup>th</sup> Jan. 2023.

<sup>34</sup> Most active investor and amongst the African 117 Tech Startups.

<sup>35</sup> referred to as the 16<sup>th</sup> largest bank, U.S bank, also known as startup bank, held deposits of almost half of all U.S venture -backed start-ups, was sold to First Citizens Bank which helped to assuage depositors fear of losing access to their funds. < [https:// Disrupt- Africa. com](https://Disrupt-Africa.com) latest report > accessed 4<sup>th</sup> of June, 2023.

<sup>36</sup> Operations of the Act; Establishment of the National Council for Digital Innovation and Entrepreneurship; Operational Structure of the Council; Startup Labelling Process; Startup investment Seed Fund; Training, Capacity Building and Talent Development; Tax and fiscal Incentives; Collaboration with Regulators; Accelerators and Incubators; Clusters, Hubs, innovation Parks and Technology Development Zones; Miscellaneous Provisions.

<sup>37</sup> Position Nigeria's startup ecosystem, as the leading digital technology Centre in Africa, having excellent innovators with cutting edge skills and exportable capacity; 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 development and growth of technology related talents; and Position Nigeria's startup ecosystem, as the leading digital technology Centre in Africa, having excellent innovators with cutting edge skills and exportable capacity.

<sup>38</sup> E. Freeman, *strategic management a stakeholder approach*. Boston. (Titimar/Ballin Ballinger 1984)52.

<sup>39</sup> 2020 (as amended) CAMA, with its objectives being the creation, innovation, production, development or adoption of a unique digital technology, innovative product, service or process.

for innovators in these categories in enjoying the protection and benefits under the Act. Objects of companies required for registration as a startup label under the Startup Act 2022 include innovation, development, production, improvement, and commercialization of a digital technology, an innovative product or process, and a repository of a product or process of digital technology. The owners or authors of registered software are also considered. One or more Nigerians, holding one-third of the shares, could be the founders or cofounders. Sole proprietorships and partnership models satisfy the conditions set out in subsections c, d, and e of the Startup Act, 2022.<sup>40</sup>

## **2. Establishment of the National Council for Digital Innovation and Entrepreneurship (NITDA)**

Part II of the Act establishes the National Council for Digital Innovation and Entrepreneurship (NITDA) as a corporate body with perpetual succession and a common seal. It can sue and be sued in its corporate name and has the power to acquire, hold, purchase, mortgage, and deal with property, moveable or immovable, real or personal.<sup>41</sup>

### **Members of the Council**

Section 5 of the Act provides for the tenure of the members of the council other than ex-officio members and their qualifications. The president shall serve as the chairman of the council, while the vice president shall serve as the vice-chairman. Other members of the council include the Minister for Communications and Digital Economy, who shall preside over the affairs of the council in the absence of the president and the vice president. The Minister for Communications and Digital Economy shall be supported by the Minister for Finance, Budget, and National Planning, the Minister for Industry, Trade, and Investment, and the Minister for Science, Technology, and Innovation. The governor of the Central Bank of Nigeria (CBN), four representatives of the startup consultative forum, one member each of the Nigeria Computer Society and Computer Professional Registration Council of Nigeria are also members of the council. The Director-General of the National Information Technology Development Agency shall serve as the Secretary of the Council.<sup>42</sup>

Therefore, the composition of the board is quite impressive for the purpose of providing an enabling environment for the startup ecosystem in the country. The inclusion of representatives of major stakeholders in the industry on the Board is very welcoming, providing the Council with the powers to deliberate and create the needed enabling environment for the nation's startup ecosystem. The chairman of meetings is also adequately provided for in the absence of the president and the vice president. There is however no provision for quorum amongst the listed components of the NITDA.<sup>43</sup>

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<sup>40</sup> Section 13 (1), (2) (a-d), 3, 4, 5 & 6.

<sup>41</sup>Section 3 (2) (a-c) of the Startup Act, 2022.

<sup>42</sup> Section 4 (a)- (k).

<sup>43</sup> Section 4 (1) (c).

### **Powers of the Council**

Section 7<sup>44</sup> of the Act provides for the powers of the council. The council has powers, among others, as stated in the Act, to prepare policies toward achieving the overall objectives of the Act and to coordinate existing and new laws that affect startups. Examples are laws relating to the Security and Exchange Commission (SEC), CBN, insurance, registrations with the Corporate Affairs Commission, etc. Apart from these functions, the council also has powers to approve the programs of the secretariat as established under the Act and to monitor the level of implementation and compliance of stakeholders with the provisions of the Act.

### **Operational Structure of the Council**

The National Information Technology Development Agency (NITDA) shall serve as the secretariat of the council, with the Director-General as the Head.<sup>45</sup> The secretariat is vested with powers to ensure the implementation of the goals and objectives of the Act. Such powers include managing the process of labeling a startup and maintaining public online platforms for disseminating information on matters related to the establishment and development of a startup, incubation, acceleration, venture building programs, and access to physical and non-fiscal support.<sup>46</sup> The powers given to the secretariat also include collaboration with relevant ministries, departments, and agencies (MDAs),<sup>47</sup> implementation of the National Digital Innovation, Entrepreneurship, and Startup Policy (NDIESP) for the development of the startup ecosystem,<sup>48</sup> promoting the establishment and growth of a startup in Nigeria by way of entering into partnerships with incubators and accelerators with the approval of the council,<sup>49</sup> and maintaining a directory of startups, incubators, and accelerators.<sup>50</sup> This section of the Act promotes the collation of statistics

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<sup>44</sup> Formulate and provide general policy guidelines for the realization of the objectives of this Act: give overall directions for the harmonization of laws and regulations that affect a startup; approve the programs of the secretariat established under the Act; ensure the monitoring and evaluation of the regulatory framework to encourage the development of start-ups in Nigeria; monitor and ensure the implementation of the policies and programs of the secretariat;

Support digital technological development through grants to persons, research institutions, and universities pursuing postgraduate programs in the areas of science, technology and innovation;

Make alter or revoke rules and regulations for carrying out the functions of the secretariat, subject to the provisions of this Act;

Appoint a council agent to carry out such functions as the Council may require; and

Perform other functions as are necessary or expedient to ensure the efficient performance of the functions of the secretariat and other bodies established under this Act..<sup>44</sup>

<sup>45</sup> Section 9.

<sup>46</sup> Section 9 2 a-b.

<sup>47</sup> Section 9 c.

<sup>48</sup> Section 9d.

<sup>49</sup> Section 9e, enter into partnership with local and international business incubators, accelerators and digital innovation hubs to promote the establishment and growth of a startup in Nigeria, subject to the approval of the Council.

<sup>50</sup> Means a fixed term, cohort based program which provides a startup with mentorship and educational assistance for equity in the startup company.

on startups, incubators, and accelerators, which all help to monitor their growth and development.<sup>51</sup> The secretariat is also empowered to support academic research activities, growth, and promotion of the commercialization of local research and the development of digital innovation by startups.<sup>52</sup> Collaboration with the National Universities Commission (NUC), the National Board for Technical Education (NBTE), and other tertiary institution regulatory bodies is made possible. Adequate facilities for research and the promotion of multi-disciplinary collaboration among universities, polytechnics, and research institutions are also provided.<sup>53</sup> The secretariat is also saddled with the responsibility of developing, implementing, and monitoring guidelines for setting up digital technology innovation hubs, digital technology parks, and community hubs in Nigeria.<sup>54</sup> To this end, the secretariat shall foster synergy between startups and angel investors,<sup>55</sup> venture capitalists, private equity firms, private investors, development finance institutions, global asset management firms, financial institutions, research institutions, and other related institutions at the national and international levels.<sup>56</sup> It also has the power to enter into partnerships to promote startup development with angel investors, venture capital firms, private equity firms, development financial institutions, and other relevant funding organizations.<sup>57</sup> The operational structure of the council is indeed wide, as provided in Section 9 (1) (p) of the Act. It will further aid the development of students in secondary and tertiary institutions, by directing focus to technological and innovative studies.

### **Startup Labelling Process**

The startup portal is a platform where startups can conduct registration processes with relevant government MDAs and interact with the government, private institutions, angel investors, venture capital firms, incubators, accelerators, and other relevant institutions.<sup>58</sup> A startup portal coordinator shall be appointed<sup>59</sup> who shall have at least 10 years' experience in technology and entrepreneurship funding. Applications are made to the startup portal in the prescribed form.<sup>60</sup> The Act<sup>61</sup> provides for the startup support and engagement portal for the purpose of registration with relevant government, ministries, departments, and agencies. This presupposes that a startup operates effectively and efficiently. They should also conduct business with relevant MDAs and register through the portal.<sup>62</sup> The application to the startup portal must be in the prescribed form,

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<sup>51</sup> Section 9f.

<sup>52</sup> Section 9i.

<sup>53</sup> Section 9p.

<sup>54</sup> Section 9 L.

<sup>55</sup> Section 47, Interpretation section of the Act defines angel investors as a high net worth individual or company which provides funding to an early –stage startup typically in exchange for equity in the startup company.

<sup>56</sup> Section 9m.

<sup>57</sup> Section 9n.

<sup>58</sup> Section 10.

<sup>59</sup> Section 11, the secretariat shall with the approval of the Council appoint a Coordinator for the Startup Portal with 10 years' experience in technology and entrepreneurship.

<sup>60</sup> Section 14 (1)- (2).

<sup>61</sup> Section 15 (19) (a-b).

<sup>62</sup> Section 10 (1).

with supporting documents<sup>63</sup> and approval given upon the coordinator's satisfaction that the applicant has met the specified requirement.<sup>64</sup> A startup label certificate issued by the secretariat is valid for 10 years from the date of issuance.<sup>65</sup> A breach of the obligations of a startup can lead to a withdrawal after 30 days of notification.<sup>66</sup> In the event of default in this performance and after 30 days of notification of refusal to rectify the default, the defaulters' label shall be withdrawn, but a default can be rectified.<sup>67</sup> A startup company under the Act has certain obligations that must be performed regularly and duly.<sup>68</sup> This includes compliance with the existing laws governing businesses in Nigeria, as stated above. In the course of doing business as a startup label, a startup shall furnish information as needed to the portal annually, particularly in respect of its human resources,<sup>69</sup> total assets, and the annual turnover achieved from the period the startup label was granted. The purpose is to ensure that there is no disconnect between the activities of the startup label and information concerning its accounts, structure, funding, composition, and performance of its objects. It must also comply with the obligations as part of the objectives of the government to promote ease of doing business.

### **Purposes of Startup Label**

The portal serves the following purposes:

- Interaction between a startup, the government, private institutions, angel investors, venture capitalists, incubators, accelerators, and other relevant institutions.
- Facilitation for beneficial challenges and programs like incubation and accelerator programs, showcases, pitch competitions, fellowships, and other related programs.<sup>70</sup> Through the portal, a startup can have access to finance, information, innovation, and the global market. It also fosters information exchange between various stakeholders. The coordinator maintains the register of labeled startups, keeps relevant documents, and performs other functions incidental to maintaining its startup list.

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<sup>63</sup> Section 14 (1) & (2).

<sup>64</sup>Section 15 (1) (a)- (b).

<sup>65</sup> Section 15(3).

<sup>66</sup> Section 16 (2).

<sup>67</sup> Section 16 (2), 17 & 18.

<sup>68</sup> Section 16 1(a)- (b) which provides for compliance with all extant laws governing business in Nigeria;

Update the portal annually with information such as the number of human resources, total assets and the annual turnover achieved from the period the startup label was granted.

Maintenance of proper book of accounts in accordance with reporting obligations provided under extant laws and regulations; provision of an annual report on incentives received and advancement made by virtue of the incentives;

Notifying the coordinator of any change in structure, composition or objects of the labelled startup within a period of one month from the date of such change.

<sup>69</sup> with the aid of the Porter, startups can be monitored as per their activities.

<sup>70</sup> Section 10 (2) (c).

## **Government Funding of Startup**

The Act provides for funding and financing for startups by the government in collaboration with other sources approved by the Council.<sup>71</sup> Funding and finance are provided by the Startup Investment Authority.<sup>72</sup> The minimum amount expected to be paid into the account on an annual basis is #10,000.000.000.00<sup>73</sup> from sources approved by the Council.<sup>74</sup> The fund shall finance labeled startups annually, and provide relief to aid technology, laboratories, accelerators, incubators, and hubs. This is a great highlight of the Act, as funding and effective management will provide a good start for a startup. The problem envisaged here is that of screening and evaluating businesses in terms of quality of the products and services being provided. Decisions in this regard are subject to the expert knowledge of the fund manager, who uses best practices to evaluate investment before funding is released to a startup.<sup>75</sup> The provision for investment sums is encouraging for startups. However, there is no state minimum or maximum amount to be given out per time, regulation of the amount to invest in a startup per time, timelines for recovery of capital with interests, or binding agreement in respect of the same. Guiding rules in respect of funding and the distribution of money from government sources in order to ensure portfolio performance become expedient. Alberini<sup>76</sup> indicated some criteria to be taken into consideration before dispensing funds to startup labels are considerations of geographical operations area, the sector in which the business operates, products and services, the underlying technology, target market and its trend, financial forecast, funding need, and management team. Section 12 of the Act provides for a startup consultative forum to provide a platform for information sharing and collaboration in the Nigerian startup ecosystem. Such information includes qualifications for a startup; relevant incentives beneficial to a startup; information on available local capabilities, nomination of a representative to the council, and deliberations on memo to council for consideration.<sup>77</sup> Members of the forum include: labelled startup, venture capitalists<sup>78</sup> angel

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<sup>71</sup> National Information Technology Development Agency (NITDA).

<sup>72</sup> Section 19 (1), the Fund Manager.

<sup>73</sup>Section 19(1) of the Act provides for the Startup Investment Seed fund to be managed by the Fund Manager known as the Nigeria Sovereign Investment Authority.

<sup>74</sup> Section 19 (2).

<sup>75</sup> Due diligence, financial due diligence – financial and economic data, legal due diligence, whether the company is potentially liable. Fiscal diligence, commercial due diligence is used to assess the competitive position of the business in the market with respect of its main competitor.

<sup>76</sup> p.12.

<sup>77</sup> Section 12 1 a-f.

<sup>78</sup> Venture Capitalists (VC) are financial intermediaries and is a form of financing by investors to a new venture mainly tech focused with prospect of long term growth ( <https://www.scinapple.101>) in exchange for a minority equity stake usually given to newly establish businesses for a later profit as the business grows. Traced back to the 19<sup>th</sup> century but gained grounds after the II world war. Georges Diriof is considered to be the father of venture capitalism. Creating the first institutional private equity fund with sources other than wealthy families. They invested \$70,000 in 1957 in the DEC companies, gained a 35.5 million gain profits in 1968, when the company went public. In U.S, see the small Business Act, 1958. The regulatory Act allowed the venture capitalism model to spread as the main financing method for entrepreneurial initiatives & projects. Between 1960-1980, venture capitalist's role was particularly enhanced by the Silicon Valley phenomenon investing on starting and expanding company. In 2018, VC industry rose with 255 billion invested globally. In the US, VC firms are organized as Limited Partners, LP - General Partners GP, pension

investors, incubators, accelerators and innovation hubs, and two civil society organizations involved in the advancement of technology and innovation.<sup>79</sup>

Talent development is provided for under the Act through collaboration with the National Universities Commission, the National Board for Technical Education, tertiary institutions and the establishment of digital technology, innovation parks, and hubs in the universities, polytechnics, and other institutions of learning. Development of modules, programs and workshops for impacting knowledge necessary for the establishment and running of startups in Nigeria is also encouraged under the Act.<sup>80</sup> Support from academic research institutions towards the development of a startup<sup>81</sup> is encouraged by funding the cooperation and sharing of research information and knowledge, including supporting conferences, workshops, seminars, and meetings.

### **Tax Reliefs & Benefits**

Startups are exempted<sup>82</sup> from income tax reliefs for 3 years and an additional two years, if still within the period of the validity of a labelled startup. There is also exemption from the Companies' Income Tax Act. Other incentives include:

- a) Exemptions from contributions to the Industrial Training Fund.<sup>83</sup> A startup that will be exempted from contributing one percent of its total payrolls to the ITF, must have been providing in-house training for its employees for the period it remains a startup. Also, before an investor can enjoy this kind of tax relief, such an investor must have held the asset of the startup company he or she wants to dispose of for a period not less than two years.<sup>84</sup>
- b) Export incentives and financial assistance from the Export Development Fund, Export Expansion Grant and the Export Adjustment Scheme Fund.<sup>85</sup> This type of incentive is particularly for labelled startups involved in the exportation of products and services which are deemed eligible under the Export (incentives and Miscellaneous Provisions) Act.<sup>86</sup>
- c) Access to grants and loan facilities administered by the CBN, Bank of Industry, Credit Guarantee Scheme for provision of financial support, provision of credit information to startups.

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funds, Form dating, insurance companies, High net with families and individuals. The wealth collected is managed by a GP with fiduciary responsibility to their LP.

<sup>79</sup> Section 12 a-e.

<sup>80</sup> Section 22(1) & 22 (2).

<sup>81</sup> Section 22 (3).

<sup>82</sup> Under Section 25 (1) & (2) of the Act.

<sup>83</sup> Section 25(5) The Industrial Training Fund Act, 2011 (as amended), Enterprises (companies inclusive) with 25 employees on their payrolls are mandated to contribute 1% of total payroll to the ITF on or before 1<sup>st</sup> of April of the following year of payment.

<sup>84</sup> A tax exempt company incurs other additional responsibility, such as administrative requirement of annual reporting and meeting stipulated criteria.

<sup>85</sup> Section 26 of the Startup Act; Section 1, 2, 3, 4, 5, 6 of the Export (Incentives And Miscellaneous Provisions ) Act Cap. E.19 LFN, 2004.

<sup>86</sup> Ibid.

- d) Access to tax credits on investment to be enjoyed by stakeholders with investments in a labelled startup or in the startup Ecosystem.<sup>87</sup> Such investors include angel investors, companies, individuals, venture capitalists, accelerators, incubators etc. Access to pioneer status incentives (PSI) scheme is also available to labelled startups falling within that range upon application through the Secretariat to the Nigerian Investment Promotion Commission (NIPC) for the grant of tax reliefs and other incentives under the PSI scheme.<sup>88</sup> An ecosystem which invest in a labelled Startup shall be entitled to an investment tax credit to the equivalent of 30% of the investment, provided such credit shall be applied on any gains on investment subject to tax. 5% withholding tax income derived from the provisions of services to labelled startup.
- e) Section 42 (3) of the Act provides incentives for a startup, accelerator or incubator carrying out an approved activity in a zone under the Nigeria Export Processing Zones Act.<sup>89</sup>

It is expected that these incentives being beneficial and advantageous in nature will encourage innovations and disruptions of technology in most sectors of Nigerian economy and aid the growth of the ecosystem. It will further help pioneer startup to thrive and in the long run raise revenue for the government. Apart from Startups' tax reliefs and incentives stated above, Financial technology companies (fintech startups)<sup>90</sup> are given the opportunity to liaise with Corporate Affairs Commission (CAC), Central Bank of Nigeria (CBN), Security exchange Commission (SEC) and obtain other regulatory agencies' certificate on Startup portal to enjoy the incentives and benefits provided under the Act.<sup>91</sup> By this provision, Startups that comply with the provision of the Act has a lot to benefit particularly from collaboration of the council with the CBN & SEC. This will further contribute to lifting the standard of the Nigeria startup ecosystem to meet with global standards. The effectiveness of the provisions of the Act, will however, be determined by its implementation.

### **Collaborations with other institutes for incentives**

The Startup Act provides for collaborations with other institutes such as:

- The Corporate Affairs Commission.<sup>92</sup>
- The Nigerian Copyright Commission, the Trademarks, Patent and Design Registries.<sup>93</sup>
- The Securities and Exchange Commission (SEC).<sup>94</sup>

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<sup>87</sup> Section 29.

<sup>88</sup> Section 24.

<sup>89</sup> Cap N107, LFN 2004.

<sup>90</sup> Section 34 (1), Part VII of the Act.

<sup>91</sup> Section 34.

<sup>92</sup> Section 31: to ease conduct of transactions by labelled startup with the Commission, for seamless and expeditious processes and transactions.

<sup>93</sup> Section 31: to provide or designate a separate section on the Startup Portal to ease registration of intellectual property for labelled Startups; assisting to facilitate the application for grant or revocation of patents and institution of Legal action for infringement of any intellectual property rights; facilitate assistance to labelled startups for the filing and registration of their trademarks and patents at the international level.

- The National Office for Technology Acquisition and Promotion (NOTAP).<sup>959697</sup>

The Council shall assist qualified labelled startups ‘stocks and commodity exchange to be listed on relevant Board of the Nigerian Exchange Limited (NGX).<sup>98</sup> Section 37(1) of the Act provides for repatriation of capital and profits by a foreign investor, including dividends or profits net of all taxes, attributable to the foreign investor’s investments.<sup>99</sup> Proceeds net of all taxes and other obligations in the event of a sale or liquidation of the startup or any interest attributable to the foreign investment. The various tax and fiscal incentives for startup companies in Nigeria are all incentives geared towards innovation and growth of startups, including credit guarantee schemes to attract both local and foreign investors, ease the financial burdens of startups, and speed up growth of the ecosystem.

### **Accelerators and Incubators Program**

This part of the Act<sup>100</sup> provides for a framework policy to be developed by the Council for accelerators and incubators program. This is done by way of encouraging establishment and development of accelerators and incubators programs for startup and the development of standards and guidelines to regulate their relationships.<sup>101</sup> Registers of accelerators and incubators that contributed to the startup ecosystem is to be maintained by the secretariat. Incentives also accrues to them if they are actively involved in providing goods, services or finance in supporting the operation of startups.<sup>102</sup> Section 40 provides for the establishment of clusters, hubs, innovation clusters, hubs parks through a framework to be issued by the council.

### **Roles of Innovation Clusters, Hubs, and Parks**

- Connecting, fostering, collaboration and generating businesses between a startup and a large company;
- Collating expertise, ideas and perspectives;
- Providing access to resources and professional services; and
- Promoting, collaboration and innovation between Startups.<sup>103</sup>

### **The role of Clusters, Hubs, Innovation parks, and Technology Development zones**

- They provide dedicated teams, help desk and contact support to a startup.

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<sup>95</sup> Section 33 &34: the Secretariat to collaborate with NOTAP to design a separate section on the startup Portal to ease technology transfer registration for labelled startup; to provide discount on all applicable fees for the registration and provide technical assistance towards commercialization of their research result.

<sup>97</sup> One of the roles of the Council is to work with the Central Bank of Nigeria and the Security and Exchange Commission, Nigeria, to harmonize rules and regulations that affect the establishment, licensing and operations of Fintech Startups.

<sup>98</sup> Section 36.

<sup>99</sup> Section 35 (a).

<sup>100</sup> Part viii of the Act.

<sup>101</sup> Section 38(3) a.

<sup>102</sup> Section 39 1, a, b.

<sup>103</sup> Section 40 (1) (2) a-d.

- Assistance for a startup to understand the regulatory framework and its applicability.
- Assistance in registration and application for authorization.
- Assistance and facilitation for the expansion of a startup into foreign markets.
- Provision of free work space at subsidized rates and other functions incidental to the attainment of the functions provided in paragraphs 1-5 of the Act.<sup>104</sup>

### **Compliance under the Act**

The contravention of any rule, regulation, or guideline issued under any of the provisions of this Act shall constitute an offense under the said rule, with punishment.<sup>105</sup> Pre-action notice shall be served on the council before the expiration of a period of 30 days after written notice of intention to commence the suit has been served.

### **Conclusion & Recommendations**

An overview of the Startup Act 2022 has been provided particularly on the objectives and operations of the Act. Incentives available under the Act for startups and other stakeholders within the ecosystem have also been examined and analyzed. Arising from the foregoing, the Act is relatively new, with little or no case law interpreting the provisions as discussed above. The provisions of the Act, if well implemented, will create and promote an enabling environment for startup registration, funding, and regulations generally aimed at moving the industry forward. In the long run, it will boost the economy of the country as startups, apart from creating solutions and services through innovations, will also attract investors, accelerators, and incubators. By so doing, Nigeria will soon become the next one-stop hub for the startup ecosystem in Africa and globally too. A joint effort of the government and all stakeholders in the industry involved is required. This is the next stage of business in the country and globally.

In light of the above, it can be said that effective implementation of the Act can be fully achieved through the following recommendations:

1. Section 9(p)<sup>106</sup> of the Act supports the provision of adequate facilities for research and inter-institutional collaboration amongst tertiary institutions in Nigeria. Research and development courses relating to technological innovations are hereby recommended for more recognition and inclusion in Nigeria's tertiary education curriculum.<sup>107</sup> The powers of the council can thus be amended to include monitoring the implementation of the curriculum.
2. Startups should not only be encouraged to focus more on developing creative solutions that are globally transferable. They should also focus on services useful for the local market. This can be included in the Act as a condition for the grant of a startup label.

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<sup>104</sup> Section 41 a-f.

<sup>105</sup> Section 41 a-f.

<sup>106</sup> Collaborate to focus with the National Universities Commission, National Board for Technical Education and other Tertiary Institutions regulatory bodies, to provide adequate facilities for research, and promote multi-disciplinary collaboration among Universities, polytechnics, and research Institutions.

<sup>107</sup> Section 9(g).

3. Slow internet speed in Nigeria needs to be improved for efficient delivery of startup labels' services. Improvements generally in infrastructure in the country will go a long way toward stabilizing startups.
4. The Act should be amended to embrace Article 6 of Decree No. 2018 of the Tunisian Law. The said article gives room for applications by natural persons to be granted pre-label status even before the incorporation of their company. The period suggested is 6 months, within which the process of creating the company will be started and completed. Before the pre-label period of 6 months expires, the documents completing the dossier must be submitted and the status label issued within a maximum of 3 days.<sup>108</sup>
5. For effectiveness, stakeholders mentioned in Nigeria's Act must be familiar with their roles and those of other agencies with which they are required to work. This is to avoid a disconnection in the functions and powers of the said bodies and failure to meet the objectives of the Act. Collaboration is required between all agencies stated in the Act, including CBN, SEC, NITDA and the fund coordinator of the Secretariat, so as to promote efficiency. Training of the fund manager on best practices for sustainable investment strategies is required before the decisions to fund a labeled startup are made.<sup>109</sup>
6. Regulation under the Act should be made quickly to provide for investable sums from the seed fund for approved startups. Timelines for the recovery of capital with interests should be set with agreement in respect of the same which is binding on recipients. Guidance rules should be put in place with respect to funding and the distribution of money from government sources in order to ensure portfolio performance.
7. Stakeholder engagement from time to time with the government should be encouraged within the ecosystem to ensure compliance with the law, monitoring, and feedback. This will promote the sustainability of the startup label and the ecosystem as a whole.
8. The development of a set of Key Performance Indicators (KPI) is very necessary to guide reports by startup labels to the fund manager and the coordinator.
9. Resources and earnings from taxes must be focused on the right actions by the government for maximum impact on increasing ecosystem performance.
10. A time frame should be specified for labeling applications and approval of registrations under a committee set up by the coordinator.
11. The possibility of opening a special foreign currency account with authorized intermediaries and international technology should be explored.
12. The opportunity of being registered as a strategy for creating, financing, organizing, and internationalizing startup businesses would go a long way towards supporting startups.

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<sup>108</sup> Article 6 of decree No 2018-840 of October 11, 2018.

<sup>109</sup> Due diligence, financial due diligence – financial and economic data, legal due diligence, whether the company is potentially liable. Fiscal diligence, commercial due diligence – to assess the competitive position of business in the reference market with the main and other competitors.

Incentives such as startup-grants for the first year of registration, startup leave, financing instruments, guarantee funds, or support for internalization through foreign exchange accounts as provided in other jurisdictions should be encouraged to help startups grow.