

Highlights of the Nigerian Startup Act 2022

Introduction

On 19th October 2022, the Nigerian Start Up Act, 2022 (the “NSA”) was signed by the President of the Federal Republic of Nigeria. The NSA established the Nigerian Council for Digital Innovation and Entrepreneurship (“Council”) and provides for the creation and development of an enabling environment for technology-enabled startups in Nigeria.

The NSA defines a startup as a company in existence for not more than 10 years with its objectives being the creation, innovation, production, development or adoption of a unique digital technology innovative product, service or process. The key objectives of the NSA are to (a) provide a legal and institutional framework for the development of startups in Nigeria; (b) provide an enabling environment for the establishment, development and operation of startups in Nigeria; (c) provide for the development and growth of technology-related talents; and (d) position Nigeria’s startup ecosystem, as the leading digital technology centre in Africa, having excellent innovators with cutting edge skills and exportable capacity.

The NSA applies only to companies incorporated under the Companies and Allied Matters Act, 2020 (the “CAMA”) and granted startup label as prescribed by the NSA, and entities whose activities affect the creation, support, and incubation of labelled startups in Nigeria.

Startup Labelling Process

A labelled startup is a startup labelled under the NSA and issued a certificate (startup label) by the Coordinator of the Startup Portal. For a startup to be eligible to be so labelled, it must satisfy the following requirements:

- a. It must be incorporated with the Corporate Affairs Commission as a limited liability company and must have been in existence for a period not exceeding 10 years from the date of incorporation.
- b. The objects of the company must be centered on innovation, development, production, improvement, and commercialization of a digital technology innovative product or process;
- c. it must be 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. if it is a sole proprietorship or partnership, it shall be granted a pre-label status for a period of six (6) months to enable it comply with the requirements in items (a) to (d) above.

Instructively, the NSA does not apply to a holding company or subsidiary of an existing company which is not registered as a startup.

A startup label is only valid for a period of 10 years from the date of issuance.

Obligations of a Labelled Startup

While the NSA provides various incentives to the benefit of labelled startups, there are obligations which the labelled startups are bound to observe. Therefore, a labelled startup is obligated to:

- a. comply with all the extant laws governing businesses in Nigeria;
- b. provide information annually on the number of human resources, total assets and the annual turnover achieved from the period the startup label was granted;
- c. maintain proper book of accounts in accordance with reporting obligations provided under extant laws and regulations;
- d. provide an annual report on incentives received and advancement made by virtue of the incentives;
- e. notify the Coordinator of any change in structure, composition or objects within a period of one month from the date of such change; and
- f. comply with the obligations set out by the Coordinator after issuance of the startup label.

The consequence of defaulting in any of these obligations or not meeting the eligibility criteria is that the startup will be notified by the National Information Technology Development Agency (the “Secretariat” of the Council) to comply within 30 days of the notification, failing which the startup label will be withdrawn. However, a startup whose label has been withdrawn may apply to the secretariat for reissuance, provided that the default has been rectified.

Establishment of Startup Investment Seed Fund

The NSA established the Startup Investment Seed Fund (Fund) into which the sum of N10,000,000,000 (Ten Billion Naira) is to be paid annually and managed by the Nigerian Sovereign Investment Authority. The Fund is to be applied as follows:

- a. to provide labelled startups with finance;
- b. provide early-stage finance for labelled startups 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.

Tax and Fiscal Incentives under the NSA

The NSA provides various incentives for labelled startups, investors investing in a labelled startup, and accelerators and incubators that are registered with the Secretariat.

A labelled startup is eligible to take benefit of the following incentives:

- a. Pioneer Status Incentive (PSI), provided that it falls within the industries captured under the PSI scheme;

- b. exemption from the payment of income tax or any other tax chargeable on its income or revenue for a period of three years and an additional two years if still within the period of a labelled startup, provided that the commencement date of the tax relief shall be the date of the issuance of the startup label. This is in line with provisions of the Industrial Development (Income Tax Relief) Act;
- c. full deduction of any expenses on research and development which are wholly incurred in Nigeria. The restrictions placed by the Companies Income Tax Act do not apply to a labelled startup;
- d. Non-resident companies that provide technical, consulting, professional or management services to a labelled startup shall be subjected to a five percent withholding tax on income derived from the provision of such services, provided that the payment of the withholding tax, shall be the final tax to be paid by such non-resident companies;
- e. Exemption from contributions to the Industrial Training Fund where the startup provides in-house training to its employees for the period where it is designated as a labelled startup;
- f. export incentives and financial assistance from the Export Development Fund, Export Expansion Grant and the Export Adjustment Scheme Fund, for labelled startups involved in the exportation of products and services, which are deemed eligible under the Export (Incentives and Miscellaneous Provisions) Act,
- g. 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 and entrepreneurs;
- h. access to Credit Guarantee Scheme to be established by the Secretariat for the provision of accessible financial support to a labelled startup; creation of a framework for credit guarantee for a labelled startup; provision of financial and credit information to startups; and provision of financial management capacity building programmes to startups.

The incentives available to investors (angel investor, venture capitalist, private equity fund, accelerators, or incubators) are as follows:

- a. investment tax credit equivalent to 30% of the investment in the labelled startup provided that such credit shall be applied on any gains on investment which are subject to tax;
- b. exemption of capital gains tax on gains that accrue from the disposal of assets by an angel investor, venture capitalist, private equity fund, accelerators, or incubators with

respect to a labelled startup provided the assets have been held in Nigeria for a minimum of 24 months.

Startup accelerators and incubators registered with the Secretariat are entitled to (a) incentives as may be granted by the Federal Government in accordance with the relevant regulations, provided that the accelerators and incubators are actively involved in providing goods, services, or finance crucial in supporting the operation and growth of startups in Nigeria; and (b) grants and aids for research, development, training and expansion projects.

Registered accelerators and incubators are also entitled to grants given under the Nigeria Digital Innovation, Entrepreneurship and Startup Policy and any other policy that may be issued, provided that they are actively involved in providing goods, services, or finance crucial in supporting the operation and growth of startups in Nigeria.

Also, the NSA creates a veritable opportunity for collaboration between the Secretariat and other relevant government authorities such that labelled startups can transact businesses with these agencies seamlessly and speedily, without any bureaucratic bottlenecks. Specifically, the secretariat is mandated to, among other things, collaborate with the Corporate Affairs Commission (CAC), National Office for Technology Acquisition and Promotion (NOTAP), Central Bank of Nigeria (CBN), Securities and Exchange Commission (SEC), Trademarks, Patents and Designs Registries, and Copyrights Commission, to designate separate respective sections on the Startup Portal to ease the processes for labelled startups that transact businesses with these government authorities. This would be instrumental in the registration of companies with the CAC, registration of intellectual property with the Trademarks, Patents and Designs Registries or the Copyright Commission, obtaining (Fintech) licences from the CBN and SEC, and registration of technology transfer agreements with the NOTAP.

In addition, the NSA provides fast-track processes through the Startup Portal for labelled startups that are desirous of participating in regulatory sandboxes set up by government regulators like the CBN and SEC, of course, subject to qualification and compliance with the stipulated requirements.

Repatriation of Capital and Profits by Foreign Investors

The Secretariat is mandated to collaborate with the CBN to guarantee repatriation of investment by a foreign investor through the CBN's authorized dealer in freely convertible currency of (a) dividends or profits, net of all taxes, attributable to the foreign investor's investments; and (b) 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 investor's investments. Repatriation here is carried out at the CBN's official exchange rate and the foreign investor must establish that the investment fund was imported into Nigeria through the appropriate channel by exhibiting a Certificate of Capital Importation.

Clusters, Hubs, and Innovation Parks

The NSA provides for the creation of Clusters, Hubs, and Innovation Parks (CHI-P), subject to the issuance of relevant framework for their establishment and operations by the Council. The roles of the CHI-P are, amongst other things, to connect, foster, collaborate and generate businesses between a startup and a large company.

Technology Development Zone

Another significant provision of the NSA is the mandate given to the Secretariat to collaborate with the Nigerian Export Processing Zones Authority to establish a Technology Development Zone (the Zone) in Nigeria to spur the growth and development of startups, accelerators, and incubators. A startup, accelerator, or incubator, licensed by the Zone to carry out an approved activity in the Zone is entitled to existing incentives provided under the Nigeria Export Processing Zones Act.

Conclusion

There is no doubt that the NSA is a good piece of legislation. It has the prospects of accelerating technological improvements and innovations, which will significantly ensure the rapid growth of the Nigerian startup ecosystem by creating an enabling environment for investments in Nigerian startups. It is, therefore, expected that the same spirit and ingenuity that were instrumental in bringing the NSA alive, would be deployed for effective and efficient implementation of the NSA so that its objectives will be fully achieved.

No part of this article should be relied upon as legal advice. It is only intended as a general guide on the subject and as such, we advise that you consult a lawyer where legal advice is desired.

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