

A Review of the New Nigeria Startup Act 2022: Benefits and Challenges for the Tech Ecosystem in Nigeria

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Abstract—The opening section of the new Nigeria Startup Act (NSA, Section 1(d)) recognizes the objective of the Startup Act 2022 as “positioning Nigeria’s startup ecosystem as the leading digital technology center in Africa, having excellent innovators with cutting edge skills and exportable capacity.” The Startup Bill signed into law on the 20th of October 2022, further established a ‘Startup Investment Fund’ to provide relief to startups, technology laboratories, accelerators, incubators and hubs in Nigeria. In light of the Nation’s strategic reforms for development and the push for technological advancement amongst nations, the Nigerian government passed the 2022 Nigeria Startup Act as a regulatory framework to strengthen and structuralize the Nation’s fastest growing sector, as well as provide the necessary support for startups while recognizing the importance of Education, Funding and Intellectual Property to the development of the Tech ecosystem in Nigeria. The NSA also assures government involvement in the Nigerian tech ecosystem which will further strengthen and instill trust in investors and stakeholders alike. In this paper, we will attempt a review of notable provisions of this Act, implications for the Nigerian tech ecosystem, challenges posed by the NSA and recommendations for policy.

Index Terms—Development, information technology, Nigeria startup Act 2022

I. INTRODUCTION

The tech ecosystem in Nigeria has produced an impressive number of disruptive innovations that has earned it the rank of ‘the tech hub of Africa’. With tech-companies of Nigerian origins and founders like Olugbenga Agboola and Iyinoluwa Aboyeji of flutterwave in fin-tech, Abasi Ene-Onong of 54gene in health-tech and Ayo Arikawe and Uka Eje of Thrive Agric in Agri-tech advancing Nigeria on the global map of technology, startups of Nigerian descent retain over USD 2 billion of Africa’s USD 6 billion funding and third of fin-tech’s. The International Trade Agency and the Center for Global Development both report in 2021 that Nigeria is regarded as Africa’s largest ICT market with Technology contributing 15% of the country’s gross domestic product, second only to agriculture. Today Nigerian startups employ a combined total of 19,334 people, and Information Communications Technology alone contributes about 18.44% to the country’s overall GDP [1]. There is no saying that technology has become the new “oil” to any nation’s economic development and in the words of Putin, “whoever (country) becomes the leader in this sphere will become the ruler of the world.” With about 500 startups and

counting, the importance of a central regulatory body to institutionalize the operations of the Act is long overdue and there is no better time to ‘hop on the bandwagon’ of technological development as the present time. The Nigeria Startup Act is defined as an Act to establish the National Council for Digital Innovation and Entrepreneurship (NCDIE), provide for the creation and development of an enabling environment for Tech-enabled Startups in Nigeria, as well as other related matters. It is established as an effort to bridge the gap between the relevant stakeholders in the Nigerian tech space, creating a synthesis of all interested parties to foster collaboration, funding opportunities and statutory regulation in the tech ecosystem in Nigeria. The NSA will create processes and activities that ensure a structured and uniformed operation of tech Startups in the ecosystem. By extending the provisions of the Act and providing tax incentives and reliefs to foreign investors, the Act positions Nigeria as a welcoming ecosystem for global collaboration. The provisions of the Act also reflect the extent of collaborative efforts expected at both startup, regulatory level and global level to ensure the effective implementation of the provisions of the Act.

A. The Current State of the Nigeria Tech Ecosystem

According to the Nigeria Startup Ecosystem Report 2022 [2] and following a survey of about 480 Startups in Nigeria, 36% of which provide financial technology solutions (currently the lead sub-sector in the Nigerian startup space, both in terms of levels of activity and amounts of funding secured) 12.1% with e-commerce and retail technology objectives, an aggregate of 27.5% focused on e-health, ed-tech, mobility and logistics, recruitment and HR, and agri-tech, entertainment, marketing, energy, property-tech and others (legal tech, waste management, auto-tech, connectivity, events etc.) making up the last aggregate of 24.7%, a diverse range of activities is established across the tech ecosystem. The report revealed that the high quality of tech startups produced in the country is mostly as a result of trainings hubs, accelerator programs, incubator support, (both on the local and international level) they receive, and with the quality of minds produced each year, Nigerian startups are also more likely than those from elsewhere on the continent to be selected for renowned international programmes such as Y Combinator and Techstars. In return, Nigerian startups employ a combined total of 19,334 people, and Information Communications Technology alone contributes about 18.44% to the country’s overall GDP.

II. THE ACT

As mentioned above, the Act is an effort towards deepening the country’s technology ecosystem and enabling

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the sector by ushering in a new era of innovation-friendly regulation in the country [3]. The digital universe created by COVID-19 brought about a surge in technological solutions across Africa which in turn attracted global attention both in commendation and funding. According to the 2022 H1 African Venture Capital Activity Report [4], if the continent continues to defy the global harsh microeconomic, it might end up closing at \$7 billion. This clearly indicates a sector on the rise and because startups are universally recognized to be a vital engine of economic growth, fostering a vibrant innovation ecosystem has become the main goal of governments across Africa. One of these attempts at enabling the ecosystems has been achieved through the Startup Act, which Wolken [5] calls 'the next form of policy innovation in Africa.' Wolken, who though argues that the move at a supportive legislation is merely an attempt to 'cash in' on the growing global surge in investment in African startups, also recognizes the impact a functioning startup Act could have on the system by eradicating the lack of clarity, time, and cost spent on lobbying efforts around policies, giving startups the room to be innovative. The Startup Act could bridge the 'out of touch' realities of the older populace, and the demands of the younger population, making it easier for startups to operate, incentivizing innovation and encouraging investment. Myles Bax, head of international engagement at electronics firm Robotical, also posits that the rise of Startup Acts in Africa is a result of the realization of the massive opportunity presented by technology in Africa and in order to move away from the dominance of the huge European, US and Chinese companies that operate throughout Africa, it is in the best interest of the country to 'step in' and regain autonomy. He posits that legislation such as the acts passed in Senegal and Tunisia take advantage of this sentiment by championing and supporting home-grown talent.

The first African countries to enact Startup Acts were Tunisia and Senegal and soon, a host of other African countries followed suit, including Mali, Ghana, Ivory Coast, the Democratic Republic of Congo (DRC), Rwanda and Kenya [6]. In various jurisdictions, the Startup Acts have been harnessed as a tool to structuralize the sector, prove governmental backing and involvement, and in turn, attract foreign investment. So far, it appears it has succeeded in achieving the objective of a veritable tool towards achieving these goals since following the introduction of a Startup Act in Tunisia, the sector experienced a disruptive growth in investment in just a year and the number of recorded startups naturally met an exponential growth.

1) Part 1

The first part of the Act established the rationale behind the enactment of the Act as a regulatory framework.

Section II of the NSA narrows the scope of application of the Act to companies incorporated under the Company and Allied Matters Act, CAMA and issued with a certificate of startup label which would have been received after the requirement for labelling were met. Section II also extends the application of the Act to organizations and establishments whose activities affect the creation, support and incubation of labelled startups in Nigeria.

2) Part 2

The second part of the NSA established the National Council for Digital Innovation and Entrepreneurship as the

administering body of the NSA, to formulate, provide and enforce general policy guidelines for the realization of the objective of the NSA.

3) Part 3

The third part of the NSA provides a merger of the activities of the National Information Technology Development Agency and the National Council for Digital Innovation and Entrepreneurship by prescribing the former as the Secretariat for the latter (Council. The Secretariat also enters into partnerships with local and international business incubators, accelerators and digital innovation hubs for the growth of the ecosystem, as well as foster research, capacity trainings, and a working synergy between startups and investors. Section X of part three provides for the establishment of a Startup Support and Engagement Portal through which Startups conduct the registration process with the relevant Ministries, Departments and Agencies (MDA) as well as issue licenses to labelled Startups. Opportunities will be created for startups to enter into contracts with the Government and participate in accelerator programs and pitch competitions. This portal will also serve as a hub for stakeholders encouraging information sharing, networking and cooperation, which will be overseen by the consultive body called the Startup Consultive Forum, made up of key players in the ecosystem. Some other functions of the startup portal include facilitating the issuance of a permit or licence to a labelled startup, creating opportunities for a startup to participate in beneficial challenges and programs including incubation and accelerator programs, showcases, pitch competitions, fellowships, and other related programs, helping startups access finance, information, innovation, and the global market, mitigating information exchange between various stakeholders in the Nigerian startup ecosystem, and providing information on clearances, approvals and registration requirements by a startup. The coordinator of this portal will be a professional in the technology and entrepreneurship space with at least 10 years of experience.

4) Part 4

The requirements for Startup labelling are identified in this part to include: the registration of a domestic limited liability company under CAMA with an objective of dealing with digital technology innovative product or process, to have existed for less than 10 years, and to include a founder of Nigerian descent owning at least 33% of the total shares. Organizations serving as holding companies or subsidiaries for existing companies not registered as startups are excluded. Where the Startup Label is issued, it will be valid for 10 years from the date of issuance and compliance with the obligations under the NSA will be expected or the license would be revoked after a warning to rectify the default has been issued. Thereafter, relevant MDAs and investors will be notified of the revocation. The Startup is however offered the opportunity to remedy the wrong and reapply for labelling.

5) Part 5

The Startup Investment Seed Fund is established in Part 5 to be managed by the Nigeria Sovereign Investment Authority in the capacity of fund manager. The fund is to be applied to providing a labelled startup with financial support and to provide relief to technology laboratories, accelerators,

incubators and hubs.

6) Part 6

Elaborates tech-education, training and capacity building as one of the core objectives of the NSA. To effect this, the Secretariat will collaborate with the National Universities Commission, National Board for Technical Education and other tertiary institutions regulatory bodies to offer academic modules in the field, and relevant MDs and the private sector will be collaborated with to establish digital technology innovation parks and hubs in these universities, polytechnics and other institutions of higher learning. Particular attention will be paid to research efforts in the tech sector to keep abreast global technological trends, and results from this research will be disseminated during incubations, workshops and trainings.

7) Part 7

Tax reliefs and incentives of various kinds are offered in part seven of the NSA for applications made through the Secretariat and approved by the Nigerian Investment Promotion Commission (NIPC). Section 25 extends the Act to expenses made in research as exempted from taxation. One of these exemptions is found in subsection two which provides the exemption from 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 the company is still labelled as a startup. A Credit Guarantee Scheme will be established to ensure startups have access to grants and loan facilities administered by the CBN, the Bank of Industry or other relevant bodies for entrepreneurship. The incentives and tax reliefs are also extended to individuals, impact investors, angel investors, companies, venture capitalists, private equity funds, accelerators or incubators that invest in a labelled startup or in the startup ecosystem offering tax credits of up to 30% on their investment. In Section 31, Intellectual Property rights are also recognized for Startup development. Section 33 encourages crowdfunding by Startups through intermediaries and commodities investment platforms duly licensed by the Securities and Exchange Commission (SEC). A liaison between the Central Bank of Nigeria and the Securities and Exchange Commission, will be established to license Financial-tech companies and encourage collaboration between startups and the relevant bodies. The Secretariat will also collaborate with the CBN to guarantee repatriation of investment by a foreign investor.

8) Part 8

Reinforces the role of trainings and development resources for startups by establishing accelerator and incubator programmes in lieu of the furtherance of the objectives of the Act. This is in addition to encouraging collaborations with and between existing accelerator and incubator programmes established by private organisations on the local and international level. The Startup Portal will be used to disseminate information about new and existing trainings.

9) Part 9.

In addition to the accelerator and incubation programs, the council is charged with the responsibility of issuing frameworks to establish and operate startup innovation clusters, hubs, physical and virtual innovation parks in each state of the Federation. A Technology Development Zone will be established by the Secretariat in collaboration with the

Nigeria Export Processing Zones to spur the growth and development of startups, accelerators and incubators.

10) Part 10

An important part of the NSA is couched in Section 43 which deals with adherence to data protection laws in the processing and use of data for the purpose of giving effect to the Act. Section 44 and 45 spell out the role of the President of the Federation as a general overseer with the power to make policy guidelines and give directives of a general or specific nature to the Council or the Secretariat, as well as give consent in specified circumstances.

III. NOTABLE EFFORTS FOR OBJECTIVES

A. Education and Training.

The Nigeria Startup Act 2022 places utmost importance on Education through research enabled by funding to stay up to date on trends in the technology industry across the globe. To achieve this, relevant bodies and stakeholders in Education will be partnered with, the likes of the National Universities Commission, ITF, and private companies. Also, this is evident in the establishment of accelerator and incubator programmes in part 9 to ensure the quality of startups produced in the country remains uncompromised.

B. Funding

The NSA provides for various avenues through which funding can be sourced to further the operations and activities of Startups. First it provides The Startup Investment Seed Fund to support the operations of (especially) early startups who are still in their infancies, which will be to the tune of an annual sum not less than ten billion naira. We infer that the use of 'not less than' is meant to leave room for the sum to be subject to constant reforms to meet global standards and funding requirements posed by advancement in the universal technology space. Then it provides for collaborations between the National Council for Digital Innovation and Entrepreneurship (the administering body of the NSA), other relevant bodies, and agencies in entrepreneurship funding in the country like the Central Bank of Nigeria. A Credit Guarantee Scheme also gives startups access to loans and as an alternative measure, Startups are permitted to source their own funds through various means like crowdfunding where the money could be raised from the public through intermediaries and commodities investment platforms as long as they have been duly licensed and certified by the Securities and Exchange Commission (SEC).

C. Foreign Direct Investment

In various parts of the NSA, efforts are made to protect the interest of investors and stakeholders in the Nigerian Tech-ecosystem. This is geared towards encouraging more interests in the tech ecosystem as well as positioning the country as receptive to foreign collaborations. Some of these efforts are recognized in the extension of the application of the Act to foreign companies and establishments, provided they comply with the general provisions of the Act, as well as the specific requirements for ownerships in shares and in the case for sole proprietorship. There are more provisions introducing tax incentives and reliefs to all stakeholders.

D. Intellectual Property Rights

Intellectual Property Rights are important to the sustenance of Innovation in every Nation, which is the bedrock for development. Intellectual Property Rights (IPRs) is the country's promise of protection in exchange for innovation, as well as the disclosure of that innovation to aid further innovation and education. The objectives is to create incentives that maximize the difference between the value of the intellectual property that is created and used and the social cost of its creation, including the cost of administering the system [7]. Where there is no such protection, creators and innovators lack enthusiasm and incentive to innovate. IPRs offer them various exclusive rights to the use, commercialization and exclusion of third-party exploitation of their innovation for a certain term of years given the circumstances. The Council acknowledged this value of intellectual property rights towards the growth and development of a startup and for this reason, and as part of its objectives, the Secretariat ensures that holders of intellectual property rights are encouraged to exploit these rights as well as assist them in internationalising and commercialising their rights. To achieve this, the Secretariat will collaborate with the Nigerian Copyright Commission and the Trademarks, Patent and Design Registries.

E. Collaboration between Bodies

It is worthy of note the number of collaborative efforts to be employed for the successful implementation of the NSA towards building a viable tech ecosystem. Some of these collaborations are established between the Startups themselves, the relevant bodies like the Corporate Affairs Commission, Central Bank of Nigeria, Bank of Industry, Nigerian Investment Promotion Commission, Securities and Exchange Commission, National Universities Commission, National Board for Technical Education, National Copyright Commission, Trademark, Patents and Designs, and the National Office for Technology Acquisition and Promotion. Collaborations between startups, relevant bodies and key stakeholders are also fostered.

F. Data Privacy and Protection

Data privacy and protection is concerned with the proper handling of data to guarantee utmost security of the data and protection for the data subject (who in this case is the individual whose data will be dealt with in the course of the implementation of the provisions of the NSA. This is important because if personal data falls into the wrong hands, the subjects of the data could be exposed to harm. On the effect a breach of data privacy laws can have on the processor, if personal data is leaked due to improper handling, the Council can be caused significant damage to their reputation and could incur legal proceedings being brought against them.

The Act provides a guideline on how legal proceedings against the Council is to be instituted by noting that a civil action can only be commenced against the Council before the expiration of a period of 30 days after written notice of intention to commence the suit have been served by the intending plaintiff or his agent, and the notice will clearly state the cause of action, particulars of the claim, name and place of abode of the intending plaintiff and the relief sought.

IV. SHORTCOMINGS AND RECOMMENDATIONS FOR POLICY

As noted above, the rationale behind a Startup Act of this nature should be geared towards fostering time and cost effectiveness for Startups, to encourage more innovation and ingenuity and in turn, global investment. One important step towards achieving this is the eradication of certain bureaucracies that exist to hinder effective business operations for startups, and if any, should be reduced to the barest most important minimums required to operate a successful startup. The role of the president and vice president as chairman and vice chairman in part 2 of the Act is noted in line with the requirement for presidential approval in part 10 as prerequisite for the exercise of duties, functions or powers under the Act. It is our careful submission that such absence of a veto power and independent control for the administering body can stand to introduce undue delays that could be detrimental to Startups in a sector as fast paced as technology. This could be balanced out by limiting the input of the president and requiring same only in situations where such input is inevitable and of utmost significance.

We also recognize that certain duplicities of functions and objectives may have arisen following the establishment of the new National Council for Digital Innovation and Entrepreneurship (NCDIE) as an administering body for the NSA. Some of these duplicities exist in relation to the objectives of the National Information Technology Development Agency (NITDA) [8] which is tasked with creating a framework for the planning, research, development, standardization, application, coordination, monitoring, evaluation and regulation of Information Technology practices, activities and systems in Nigeria and all matters related thereto and for that purpose. We submit here, that the objectives of NITDA is such that an amendment to bring within its ambit, the administration of the NSA, would have achieved similar results, since the NSA is geared fundamentally towards Information Technology Development in the country. While the NCDIE is merely a Council and not an agency to top the over 900 Ministries, Departments and Agencies (MDAs) Nigeria already houses, it is still uncertain whether the NCDIE is to take the form of an entirely independent body working in partnership with the NITDA or is to be viewed as an offspring of the Agency.

Another duplicity in functions could be found in Part 6 of the NSA on training, capacity building and talent development to be supervised by the council, which is already enshrined in the objectives of NITDA (hence reinforcing our stand of NITDA as a direct administering body). Also, section 3 of the Industrial Training Fund Act [9], provides for the utilization of funds to promote and encourage the acquisition of skills in industry and commerce, as well as providing training for skills that foster technical and entrepreneurial development in the country. We submit here that since the activities of startups fall within the classification of commerce, the NCDIE should not be burdened further with providing resources which are already assigned to the ITF, and instead, an amendment of the ITF should be encouraged to elaborate further focus on Startup trainings and skill acquisition. We posit that this way, the Nation's already thin budget could be better utilized.

Wolken made a salient point that the rationale behind a Startup Act should be to hasten business processes and

scaling opportunities by eradicating the unfavorable business environments faced by entrepreneurs. While regulations sometimes pose as 'red tapes' and hurdles in starting, growing, and scaling an innovative business in Africa, especially when they become innumerable and require distinct cumbersome compliance and filing processes, a Startup Act could hasten the process by providing some clarity and transparency that reduce the time spent on lobbying efforts around regulations as well as shed light on what yardsticks and benchmarks there will be for compliance. To achieve this, the Startup Act could adopt a more comprehensive approach by providing for certain laid down processes, requirements, documentations and cost implications to startups without leaving this largely to the discretions of various parties which could allow for a vagueness that could be exploited. While the rationale behind this could be to provide room for the regulation to keep abreast new global advancements and policies peculiar to a sector as dynamic as technology, measures could be adopted to ensure the current processes and cost implications are transparent in the time being while leaving room for reforms as required, provided that such reform and rationale is communicated timely on a platform accessible to all interested party. More transparency could be adopted in elaborating on how the Startup Investment Seed Fund will be financed. Will this be directly expended from the pocket of the government? Should an involvement of startups be expected in order to fulfil this? Example through further taxation? A clarification can be made of this part of the NSA to guide startups on how the cost implications of the Act on them so that they can begin to adjust their financial processes to accommodate the new development. Also, this information could inform the relevant stakeholders on the opportunity presented to participate in the Nation's development through contributing to the development of their ecosystem within the country.

Also, with several legislations and institutions guiding business operations in Nigeria like the Company and Allied Matters Act, the Nigeria Startup Act, the Pension Reform Act, the Industrial Training Fund, the Central Bank of Nigeria, the Securities and Exchange Commission, etc., we submit that a synchronization and automation of processes for compliance with these regulations is an approach that can bring about a balance between the successful regulation of business operations, and a time and cost effective innovative startup creation and scaling without the due delays brought about by repetitive traditional modes of compliance. Whereas the provision of Section 16(1) for Startup compliance with all extant laws governing businesses in Nigeria can be achieved, we posit that there should be adequate infrastructure to allow for easy transfer of data between the administering bodies to ensure a swift and timely process that will discourage repetitive filings and cumbersome compliance methodologies. A comprehensive record of previous compliance amongst the relevant bodies should be kept and used to build in automated processes that hasten further compliance in the future. We also posit that this internal transfer of data between the relevant bodies will not breach the provisions of the Nigeria Data Protection Regulations on data processing and in fact can be termed an 'order' for the purpose of the processing of the data and can then be brought

under one of the exceptions provided in Section III of the Nigeria Data Protection Regulation on the use of personal data in furtherance of "...orders by agencies of the Federal, State or Local government or those they expressly appoint to carry out such duties on their behalf. [10]"

V. CONCLUSION

The objectives of the Startup Act to provide for the creation and development of an enabling environment for Tech-enabled Startups in Nigeria is a welcome development in the right step towards building a regulatory framework to strengthen processes and structuralize the Nation's fastest growing sector. Some notable efforts geared towards the realization of this objective as provided in the Act such as education, accelerator trainings, incubations, physical and virtual hubs, funding, collaboration between all relevant stakeholders, tax and fiscal incentives, foreign investments, intellectual property protection within the ambit of the data protection law are worthy of commendation.

However, the requisite for presidential consent in certain implementation strategies can stand to introduce undue delays that could be detrimental to Startups in a sector as fast paced as technology. We posit that such input be limited to circumstances where they are absolutely crucial and inevitable while the council maintains some autonomy in the exercise of its duties within the Act. Also, the Act may have created duplications in functions and activities with other bodies like the NITDA which we submit could be reformed to bring the administration of the Act within its direct ambit, instead of the establishment of a new council, the National Council for Digital Innovation and Entrepreneurship, which is still unclear in what capacity it operates (in partnership with NITDA or with NITDA as governing agency). We also submit that since the activities of startups fall within the classification of commerce in the Industrial Training Fund Act, the NSA should not be burdened further with providing training resources which are already assigned to the ITF, and instead, an amendment of the ITF should be encouraged to elaborate further focus on Startup trainings and skill acquisition. This recommendation is made in light of the need for a better utilization of the Nation's thin budget. We also note that the Startup Act could adopt a more comprehensive and transparent approach to ease business operations stalled by lobbying efforts around regulations by laying down set processes, benchmarks, requirements, documentations and cost implications to startups without leaving this largely to the discretions of various parties which could allow for a vagueness that could be exploited. Finally, we submit that a synchronization and automation of processes for compliance with the relevant regulations and bodies as required in Section XVI is an approach that can bring about a balance between the successful regulation of business operations, and a time and cost-effective innovative startup creation and scaling.

Nonetheless, the objective of the Act remains a step in the right direction, and we will hope to see that the change envisaged with the Act will be realized. Since the Act is still in its infancy, no measure of the impact of the Act can be reported on at the moment.

CONFLICT OF INTEREST

The authors declare no conflict of interest.

AUTHOR CONTRIBUTIONS

In this paper, Chidera Okolie provided a summary of the salient provisions of the Nigerian Startup Act as well as conducted a review of the Act to examine the objectives of as well as the tools and processes in place geared towards realization. Ijeoma Akwiwu conducted a critical appraisal of the act, shortcomings and possible issues as a result, as well as provided recommendations for policy. Chidera Okolie wrote the paper, and all authors approved the final version.

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