

# A SNAPSHOT OF THE NIGERIAN STARTUP ACT 2022

The Nigeria Startup Act (“the Act”) was enacted on the 19th day of October 2022 with the objective of providing legal and institutional framework for the development of digital startups in Nigeria. The Act seeks to provide an enabling environment for technology driven or related startups to be established and thrive in Nigeria industrial market through collaborative and harmonious systemic integration of government agencies and structures, policies, rules and regulations affecting technology driven/related startups.

The Act defines a Startup as a company in existence for not more than ten (10) years with its objective being the creation, innovation, production, development or adoption of a unique digital technology innovative product, service or process to which a startup label has been granted with its objective being the creation, innovation, production, development or adoption of a unique digital technology innovative product, service or process. This Newsletter expounds on the qualifications for the grant of a startup label and the incentives that the startup label offers, and the regulatory agency charged with the responsibility for the implementation of the Act

## Establishment Of The National Council For Digital Innovation And Entrepreneurship

The Act establishes the National Council for Digital Innovation and Entrepreneurship (“NCDIE”) as a body corporate to formulate and provide general policy guidelines for the realization of the objectives of the Act. The NCDIE is also empowered to give overall directions for the harmonization of laws and regulations that affect a startup.

Section 9 of the Act creates the Secretariat of the Council charged with the duty of executing the policies and regulations of the NCDIE. This secretarial role is saddled on the National Information Technology Development Agency (NITDA). The NCDIE is responsible for monitoring and ensuring implementation of the policies and programmes of the Secretariat. The Secretariat (“NITDA”), on its part, is responsible for managing the process of labelling startup in accordance with the Act, establishing platforms including public online platforms to provide access to information on matters pertaining to the establishment

and development of a startup, incubation, acceleration and venture building programmes, access to fiscal and non-fiscal support, collaborating with relevant Ministries, Departments and Agencies ("MDAs) and other stakeholders to promote innovation in digital technology and enterprise development for a startup in Nigeria.

The NITDA is also authorized to foster synergy between startups and angel investors, 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 level.

The NITDA, with the approval of the NCDIE shall establish a Startup Support and Engagement Portal ("the Portal") as a platform through which a startup can conduct registration processes with relevant MDAs. Additionally, the Portal will be set up to:

- facilitate the acquisition of requisite regulatory permits and licenses from MDAs and ease the process through which a startup can engage with relevant government bodies for information on clearances, approvals and registrations:
- serve as a platform for announcements and application of various available schemes and incentives offered by the federal government.
- provide a platform for startups to lay complaints and recommendations to the government, and to enter into contracts with the Federal Government, through public procurement or other engagement processes.
- host public agencies to make provision for the participation of private institutions, angel investors, venture capitalists, incubators, accelerators, and other relevant institutions.

The Portal is overseen by a Coordinator to be appointed by the NITDA whose duty it is to implement the decision of the NITDA on the labelling of a startup. The Co-ordinator is responsible for maintaining a register of labelled startups and keeping relevant documents and records of labelled startups.



## The Labelling Process

The Act provides for granting of labels to eligible startups. A startup label is a certificate issued by the Secretariat to a startup upon fulfilment of the labelling requirements. A startup is eligible for labeling if it is registered as a limited liability company under the Companies and Allied Matters Act ("CAMA") and has been in existence for not more than ten (10) years since its incorporation. The second eligibility requirement for the grant of startup label is if the objects of the company are innovation, development, production, improvement, and commercialisation of a digital technology innovative product or process.

Other eligibility requirements for a startup are that the company is a holder or repository of a product or process of digital technology, or the owner or author of a registered software and has at least one-third local shareholding held by one or more Nigerians as founder or co-founder of the startup. It is noteworthy that a Sole proprietor or Partnership is also qualified to be granted a startup label.

A startup eligible for labelling is to submit an application to the Secretariat through the Portal in the prescribed form issued by NITDA along with supporting documents. Where the application has complied with labelling requirements and approved by the NITDA, the Coordinator of the Portal shall issue a startup label to the startup and enter its name and particulars in the register for startups. A Start label is valid for a period of ten (10) years from the date of issuance during which period the startup is able to enjoy certain rights and privileges it would otherwise not have access to without a label. One of the main incentives that the label avails a startup is access to funding from the Startup Investment Seed Fund ("SISF"). The SISF is established by the Act to be managed by the Nigeria Sovereign Investment Authority ("NSIA") as fund managers. The SISF shall provide a labelled startup with early-stage financing and also provide relief to technology laboratories, accelerators, incubators, and hubs, and training and capacity building for the development of startups.

A Startup label may entitle a labelled startup to tax and fiscal incentives such as:

a. Expeditious approval of tax reliefs and incentives from the National Investment Promotion Commission ("NIPC") through the Secretariat for startups captured under the Pioneer Status Incentive Scheme, or any additional fiscal incentives the government may consider for the benefits of labelled startups;

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b. Exemption from payment of income tax or other tax chargeable on income or revenue for a period of three years and an additional two years from the commencement date of the tax relief (if the additional two years fall within the valid period of label status) provided that the date of the commencement for tax relief shall be the date of the issuance of the startup label;

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c. Full deductions on any expenses on research and development which are wholly incurred in Nigeria and the restrictions placed by the Companies Income Tax Act shall not apply to a labelled startup.

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d. Non-resident companies that provide technical, consulting, professional or management services by a non-resident company to a labelled startup shall be subjected to five percent (5%) 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;

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e. Exemption from contribution to the Industrial Training Fund where a labelled startup provides evidence of in-house training to its employees for its label validity period;

f. Access to export incentives and financial assistance from the Export Development Fund, Export Expansion Grant and Export Adjustment Scheme Fund for labelled startups involved in exportation of goods and services and eligible under the Export (Incentives and Miscellaneous Provisions) Act;

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g. Access to grants and loan facilities administered by the Central Bank of Nigeria, the Bank of Industry and other bodies statutorily empowered to assist small and medium scale enterprises;

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i. Tax credits on investment through national incentive policy (established by the Federal Government through the Ministry of Finance) for individuals, impact investors, angel investors, companies, venture capitalists, private equity funds, accelerators, or incubators which invest in a labelled startup or in the startup ecosystem.

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j. Notwithstanding the provisions of the Companies Income Tax Act, an angel investor, venture capitalist, private equity fund, accelerator or incubator which invests in a labelled startup shall be entitled to an investment tax credit at the rate of 30% of the investment made in a labelled startup provided that the credit is applied on any gains on investment which are subject to tax; exemption from capital gain tax on gains from disposal of assets by an angel investor, venture capitalist, private equity fund, accelerator, or incubator with respect to a labelled startup provided the assets have been held in Nigeria for a minimum period of 24 months.

A labelled startup however also has certain obligations consequent to its label status such as providing annual report of incentives received and advancement thereby made, notifying the coordinator of any change in its structure, composition, or object of the startup during the validity of its label status.



## COLLABORATIVE WORK BETWEEN THE “NITDA” AND OTHER AGENCIES

### The Corporate Affairs Commission (“CAC”)

By section 30 (1)(2) of the Act, NITDA shall collaborate with the CAC to designate a separate section on the (“the portal”) to ease and expedite the processes for labelled startups that conduct transactions at the Commission. Matters customarily transacted at the CAC include re-registration of companies, registration of mortgages, debentures, and charges, change in share capital, filing of Annual Returns with the appropriate fees payable on the CAC website.

## **The Nigerian Copyright Commission (“NCC”) And The Trademarks, Patent And Design Registries (“TPDR”)**

Section 31(3) of the Act provides that the NITDA shall collaborate with the Nigerian Copyright Commission and the Trademarks, Patent and Design Registries, in ensuring that a section on the Portal is designated to ease registration of intellectual property rights for labelled startups by aiding facilitation of the application for grant or revocation of patents, filing, registration and protection of their trademarks and patents at international level.

## **The National Office For Technology Acquisition And Promotion (“NOTAP”)**

The NOTAP Act makes it mandatory to register all contracts or agreements for the transfer of foreign technology entered by any person in Nigeria with NOTAP within Sixty (60) days from the execution or conclusion of the contract. In accordance with Section 33 (1) of the Act, NITDA, in conjunction with NOTAP shall designate a separate section on the Startup Portal to ease technology transfer registration for labelled startups and provide a discount on all applicable fees for technology transfer registrations for labelled startups

## **The Central Bank Of Nigeria (“CBN”) And The Securities And Exchange Commission (“SEC”)**

The NITDA is authorized to collaborate with CBN and SEC to designate a section of the Portal to ease licensing of labelled startups that operate as financial technology companies (“fintech startups”), and facilitate interactive sessions between the fintech startups, and the SEC and CBN.

The Fintech startup would through the portal be given the advantage of due notification before new rules and regulations affecting the establishment, licensing and operations of fintech startups are issued by the CBN and SEC. The NCDIE shall liaise with the CBN and SEC to harmonize the rules and regulations affecting fintech startups. Labelled startups desiring to participate in the CBN’s regulatory sandbox and SEC’s regulatory incubation programme or any other regulatory sandbox programme can submit its application through the start-up portal and shall receive fast-track process of its application through the portal.

Furthermore, the NITDA shall collaborate with the CBN to guarantee repatriation of investment by a foreign investor through CBN’s authorized dealers in freely convertible currency of dividends or profits (net of all taxes), and proceeds (net of all taxes) of sale or liquidation of startups or interests of foreign investors. Repatriation of investments in a labelled startup shall be carried out at the CBN’s official exchange rate where the foreign investor presents a certificate of capital importation as evidence of initial investment fund.

## **The Nigerian Stock Exchange (“NGX”)**

The NCDIE in collaboration with the NGX shall assist labelled startups seeking to be listed on relevant board of the NGX or other similar stock and commodity exchanges operating in Nigeria in meeting the eligibility requirements and encourage and support them by giving incentives that aid their growth and development.



## CONCLUSION

The Nigeria Startup Act is welcome development as Nigeria tows the part of digitalization to diversify its economy. In Tunisia, where a similar startup law was passed, the economy has witnessed boosts in entrepreneurial initiatives. The startup law seeking to put science and technology in the heart of Tunisia's economy forged new pathways for entrepreneurs and created new businesses. It is believed that the implementation of this Act will herald a rise in digitalization and further diversification of Nigeria's national economy base creating new vistas of industrial development.

## Disclaimer

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