

The Nigerian Startup Act and Its Benefits for the Technology Ecosystem in Nigeria

Background on the Nigerian Startup Act 2022

On 19th October 2022, Nigeria joined a few other nations¹ of the world in enacting the Nigerian Startup Act 2022 (“the Act”). The objective of the Act is to improve and encourage the technology ecosystem of Nigeria and invariably increase the likelihood of success of tech-enabled entrepreneurial ventures, attract foreign direct investment and positively impact the economic development of Nigeria.

A unique attribute of the Act is the effort of the private sector and their tenacity towards the making of the Act. The Act was hitherto private sector driven and it is impressive that it was conceived and enacted within arguably, a record time².

Description of the Startup Act 2022

The Act defined 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 process³. By this definition, not all newly formed corporate entities such as companies and business names can qualify as a Startup, even if they were registered within a 10 years’ time span. It is therefore instructive that only tech entities or tech enabled entities can qualify as a Startup.

Typical of government efforts towards attracting investment into the Nigerian economy and improving the existing structures, the Act is laden with a plethora of incentives that are largely tax related. For a Startup to access or qualify for these incentives or reliefs, there are certain requirements that must be met, and the primary qualification is for the entity to be labelled as a Startup.

Requirements for a Startup to Qualify for the Incentives in the Act

To qualify for the incentives in the Act, a Startup is required to be eligible for grant of a Startup Label. That is:

- (a) it should be registered as a limited liability company under the Companies and Allied Matters Act 2020, and have been in existence for a period of not more than 10 (ten) years from the date of incorporation;
- (b) its objects should be innovation, development, production, improvement, and commercialisation of a digital technology innovative product or process.
- (c) it should be a holder or repository of a product or process of digital technology, or the owner or author of a registered software; and
- (d) it should have at least one Nigerian as a founder or Co-founder of the start-up, provided that the Nigerian founder or co-founder will share from profit or revenue from the sale of shares.

¹Italy, Tunisia, Senegal are all countries that have enacted the Startup law. A few other countries such as Mali, Ivory Coast, Ghana, DC Congo are also making efforts towards the legislation of a Startup law.

²Initiated in May 2021, it became an Act of the National Assembly within 18months.

³Section 50 of the Act

Only upon meeting the above conditions as a Startup, will the Startup be able to enjoy the benefits of the Act.

Incentives for Start-ups That Have Been Appropriately Labelled as a Startup

Some of the incentives for labelled Start-ups in the Act include:

1. Tax Incentives

The Startup Act provides for a number of tax incentives which are available to labelled Startups and they include:

- i. *Tax credits and reliefs for investors:* Section 30 (2) provides for an investment tax credit equivalent to 30% for an angel investor, venture capitalist, private equity fund, accelerators, or incubators in the labelled start-up, notwithstanding the provisions of the Companies Income Tax Act⁴. More so, capital gains tax shall not be charged on gains that accrue from the disposal of assets by a venture capitalist, private equity fund, angel investor, accelerators, or incubators with respect to a labelled start-up.
- ii. *Tax incentives for employees:* By the provisions of Section 31 (1) of the Act, 35% of the income of “eligible employees”⁵ of a labelled start-up are exempted from personal income tax for a period of two years from the date of such employees’ engagement.
- iii. *Tax relief for eligible start-ups:* Section 26 (1) of the Act further provides for tax relief from income tax of 5% of their assessable profits in the year of assessment in which the profits were generated for a maximum period of five (5) years, if the following exist:
 - (a) it has a minimum of ten (10) employees; and
 - (b) 60% of its employees were employed without any form of work experience, and within three years of graduating from school or any vocation within the assessment period.
- iv. *Tax incentives for external (foreign) service providers:* A 5% percent withholding tax is applicable to foreign companies providing technical, consulting, professional or management services to a labelled start-up and such payment of WTH shall qualify as the final tax to be paid by a company not registered in Nigeria⁶.

⁴ Tax credits are amounts that reduce the tax you pay on your taxable income. The more tax credits that apply to you, the more you can reduce your income tax. That is, if the taxpayer is meant to pay one hundred thousand naira in tax, a 30% tax credit implies that he will merely pay seventy thousand naira only.

⁵ In determining an eligible employee, the Secretariat and the Joint Tax Board shall consider the minimum salary threshold of the employee, the level of technical skills and expertise, and compliance with registration formalities as may be required by the Secretariat.

⁶ Section 32 of the Act

Other benefits of being labelled a start-up include:

2. Access to the Startup Investment Seed Fund on the recommendation of the Nigeria Sovereign Investment Authority ("the Fund Manager")⁷
3. Access to export facilities and government grants, loans and facilities⁸
4. Support with Regulators

Conclusion

To take benefit of these incentives, it is apparent that the status of an entity as a Startup must not be in doubt and where there are existing irregularities in meeting the requirements of being a Startup, the Act has provided an avenue for it to be regularized. In focus is the provision that allows a sole proprietor to enjoy the benefit of being a Startup by converting to a company within 6months⁹. With the right guidance, young technology enabled companies seeking ways of scaling their business can take solace in the enactment of the Startup Act 2022.

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⁷ Section 19 of the Act
⁸ Section 29 of the Act
⁹ Section 13 (4) of the Act