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HIGHLIGHTS AND REVIEW OF THE  
**NIGERIA**  
START-UP ACT 2022



# INTRODUCTION



**S**ince the advent of the Covid19 pandemic, there has been an improvement in technology, resulting in a clamour for a regulatory framework to govern digital innovation and entrepreneurship, which would provide an enabling environment for technology-enabled start-ups. Two African countries, Tunisia and Senegal enacted Start-up Acts in 2018 and 2020 respectively.

In Nigeria, the Start-Up Bill was first introduced in 2021, and on the 19th day of October 2022, it was assented to and became a law. This newsletter examines the new Act and highlights among other things, the legal and institutional framework for the development of technology-related start-ups in Nigeria.



### Application of The Law

The Act specifically applies to two categories of business. The first category covers Companies incorporated under the Companies and Allied Matters Act (2020) which have been granted start-up labels by the Secretariat of the National Council for Digital Innovation and Entrepreneurship. The second category covers organizations and establishments whose activities affect the operations of a labelled start-up in Nigeria.

### Important Definitions

The Act defines a start-up as a company that has been in existence for no more than 10 years and carries out the following activities: - creation, innovation, production, development, or adoption of a unique digital technology innovative product, service, or process.

The law also introduces the phrase - “labelled start-up”, which is a start-up that has been granted a certificate upon the fulfilment of the labelling requirements under the Act.

### Start-Up Label

For a start-up to be eligible for labelling under the Act, it must be registered as a limited liability company under the Companies and Allied Matters Act 2020 and must have been in existence for no more than 10 years. It must have as its object clause, the innovation, development, production, and commercialization of a digital technology innovative product. The start-up must either be the holder or repository of a product or process of digital technology or, be the owner or author of a registered software. In addition, at least one-third of the shareholders of the start-up must be Nigerian citizens. A sole proprietorship or partnership is also eligible to be so labelled, upon the fulfilment of the conditions stated above and

would be entitled to a 6-month Pre-label status period within which time the sole proprietor or partnership is required to upgrade its registration to incorporation as a Limited Liability Company.

A Start-Up Label Certificate is valid for 10 years from the date of issuance, but it may be withdrawn if the start-up fails to comply with the obligations stated above.

### The Council and The Secretariat

The Act establishes the National Council for Digital Innovation and Entrepreneurship (“the Council”) to monitor and enforce the regulatory framework of the Act to encourage the development of technology start-ups in Nigeria.

The Act appoints the National Information Technology Development Agency (NITDA) as the Secretariat of the Council. The functions of the Secretariat include managing the process of labelling a startup; collaborating with relevant Ministries, Departments, and Agencies (MDAs) to promote innovation in digital technology, and enterprise development for start-ups in Nigeria. The Secretariat is also responsible for the implementation of the policies of entrepreneurs, startups, capital providers, the Federal Government, and other stakeholders that interact to aid a “start-up ecosystem”.

The Act establishes a Support and Engagement Portal for start-ups (“the Portal”) to ensure that technology start-ups enjoy a seamless process of registration with the relevant MDAs. The Portal will among other things, facilitate the issuance of licenses to labelled start-ups and provide relevant resources that the start-up may require.

### Start-up Consultative Forum

The Act establishes a Start-up Consultative Forum (“the Forum”) on the Portal. The Forum will provide an avenue of collaboration for sharing information that is relevant to start-ups, including how they can benefit from the incentives provided under the Act.

The Act provides a robust membership of the Forum which includes labelled start-ups; venture capitalists; angel investors; incubators, accelerators, innovation hubs; and two civil society organisations involved in the advancement of technology and innovation.



### Funding

The Act provides funding opportunities for start-ups, such as a credit guarantee scheme (the Scheme), access to grants and loan facilities administered by the Central Bank of Nigeria (CBN), Bank of Industry, and other bodies empowered to assist Small and Medium Scale Enterprises (SMEs).

In addition to this, the Act sets up a Start-up Investment Seed Fund ("the Fund") which would be managed by the Nigeria Sovereign Investment Authority ("the Fund Manager"). The fund will be a sum of not less than ₦10,000,000,000:00 (Ten Billion Naira) from which labelled start-ups can access early-stage finance. The Fund will also provide relief to technology laboratories, accelerators, incubators, and hubs.

### Clusters, Hubs, and Innovation Parks

The clusters, hubs, and parks will be designed to help start-ups by way of a helpdesk and contacts, registration and application for authorization, and the expansion of start-ups into foreign markets.





## TAX AND OTHER INCENTIVES



### Pioneer Status

A start-up operating in the industries covered by the Pioneer Status Incentives (PSI) may be granted tax reliefs and incentives under the PSI scheme which is administered by the Nigerian Investment Promotion Commission (NIPC).

### Other Tax Reliefs

A labelled start-up involved in the exportation of products and services is entitled to export incentives and financial assistance from applicable funds and grants.

A labelled start-up may be entitled to exemption from the payment of income tax or any other tax chargeable on its income or revenue for 5 years, in line with the Industrial Development (Income Tax) Relief Act. Such a start-up will also enjoy full deductions on any expense incurred for research and development in Nigeria and is also not subject to any restriction by the Companies Income Tax Act.

A labelled start-up is exempted from paying contributions to the Industrial Training Fund ("ITF") if it provides in-house training to its employees. Foreign entities which provide technical, consulting, professional, or management services to a labeled start-up are only subject to a 5% withholding tax but will be required to pay income tax.

Start-up accelerators and incubators which have contributed to the ecosystem are entitled to grants and aids for research, development, training, and expansion projects under the Nigeria Digital Innovation, Entrepreneurship, and Start-up Policy. An investor in a labelled start-up is entitled to an investment tax credit of 30%, equivalent to their investment in the start-up, and is exempt from Capital Gains Tax.

A start-up is also entitled to the incentives under the Nigerian Export Processing Zone Authority Act (NEPZA Act) in so far as it carries out any activity listed under Schedule 3 of the NEPZA Act.

An investor in a financial technology start-up ("fintech start-up") is entitled to receive full repatriation of their investment in the start-up.

### Training and Capacity Building for Start-ups

Start-ups are eligible for training through the ITF and any other agencies or organizations responsible for training entrepreneurs.

The Secretariat is also empowered to collaborate with academic institutions to include courses and modules which would impact start-ups; to set up technology acquisition centers aimed at improving the establishment of start-ups.

## COLLABORATION WITH REGULATORY BODIES

### Corporate Affairs Commission ("CAC")

Under the Act, the Secretariat is expected to collaborate with the CAC to ensure that start-ups can conduct seamless transactions with the CAC.

### Central Bank of Nigeria (CBN) and Securities and Exchange Commission (SEC)

The Secretariat is empowered to designate a section on the Portal to ease licensing procedures for labeled start-ups operating as financial technology companies (Fintech start-ups). Another benefit that avails to fintech start-ups from this Act, is receiving the prior notification by the Secretariat on new laws and regulations passed by the CBN and SEC.

A labelled start-up can also participate in the CBN's regulatory sandbox (software testing environment), SEC's regulatory incubation, or any other regulatory software testing environment upon the submission of an application via the Portal.

Start-ups can raise funds through crowdfunding investment platforms licensed by the SEC. Such investment platforms will be accessible through the start-up portal.

### National Office for Technology Acquisition and Promotion (NOTAP)

The Secretariat, in conjunction with NOTAP, must designate a separate section on the Portal to ease technology transfer registration for labelled start-ups and provide a discount on all applicable fees for technology transfer. This is to ensure a seamless registration of the transfer of technology.

### Nigerian Copyright Commission and the Trademarks, Patent and Design Registries (NCCTPDR)

The Secretariat must collaborate with the NCCTPDR to designate a separate section on the Portal to ease the registration of intellectual property rights. This would enable start-ups to apply for the grant or revocation of patents and to institute legal action for the infringement of any intellectual property rights. It would also facilitate the filing and registration of trademarks and patents even at the international level.

### Nigerian Export Processing Zone Authority (NEPZA)

The Secretariat is to establish a Technology Development Zone ("the Zone") which would be empowered to grant licenses to start-ups, accelerators, or incubators before the commencement of an activity.

### Recognition of Data Protection

Another laudable provision of the Act is that the use and processing of data in implementing the provisions of the Act must comply with Nigerian laws on data privacy.

## Conclusion

The Nigerian Federal Government has taken a bold step in promoting the ease of doing business by the ratification of this Act, given the laudable reliefs and incentives available to tech start-ups. It is our view that the implementation of the Act will promote foreign investments in Nigeria which will have a positive effect on the Nigerian economy.

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